

207

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 207.

THE UNITED STATES, APPELLANT,

vs.

J. FRANCISCO CHAVEZ AND PUEBLO OF ISLETA.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 UNITED STATES OF AMERICA,

Territory of New Mexico, ss:

Be it remembered that heretofore, to wit, on the 9th day of September, 1896, there was filed in the office of the clerk of the Court of Private Land Claims, at the city of Santa Fe, in the Territory of New Mexico, a petition; which said petition is in the words and figures following, to wit:

2 THE UNITED STATES OF AMERICA.

In the Court of Private Land Claims, sitting at Santa Fe, New Mexico.

J. FRANCISCO CHAVEZ }
 vs.
 THE UNITED STATES. }

To the honorable chief justice and associate justices of said court:

Your petitioner, J. Francisco Chavez, resident of the county of Valencia, in the Territory of New Mexico, brings this, his petition, against the United States, and thereupon shows to the court the following:

1. On the 5th day of November, 1716, Captain Antonio Gutierrez presented to Captain Felix Martinez, the then governor and captain-general of New Mexico, his petition asking for a grant of a piece of land below Isleta, apparently at a distance of two leagues, which formerly had been held by Christobal de Tapia, and setting forth that the boundaries of said land were, on the north, an arroyo de alamos, which comes down from the hills; on the south, the pueblo of San Clemente; on the east, the Rio del Norte, and on the west, the hills of the Rio Puerco; and on the same day and year aforesaid the said governor, in the name of the King, made to the said petitioner the grant that he asked for, as he described it, and as Christobal de Tapia formerly enjoyed it, and directed Captain Beltazar Romero to place the said petitioner in possession. Copies of said petition and grant, in triplicate, are filed herewith and marked "Exhibit A," the original thereof being in the office of the surveyor-general for New Mexico as archive No. 315, being a part of the original Spanish archives in the custody of said office.

3. 2. After the making of said grant, as aforesaid, the said Antonio Gutierrez entered into possession of said land, and he and his lawful successors in title from that time down to the present have had continuous peaceable and uninterrupted possession of the land embraced in said grant.

3. To the best of the knowledge, information, and belief of this petitioner there are no persons in possession of or claiming said tract of land, or any part thereof, adversely to the claim of this petitioner.

4. The said land is situate in county of Valencia, in the Territory of New Mexico, and the boundaries thereof as are hereinbefore set forth, but it is expressly averred that the eastern boundary, as hereinbefore set out, refers to the old river bed of the Rio Grande del Norte, which at the northern portion of said grant is about two miles further east than the present bed of the river. It is impossible to state, even approximately, the quantity of land embraced in said grant, as no survey thereof

has ever been made, but it is estimated to be between fifteen and twenty thousand acres, a map thereof showing the same as near as may be being filed herewith.

5. No claim for the said grant has heretofore been confirmed, considered, or acted upon by Congress or the authorities of the United States, or been heretofore submitted to authorities constituted by law for the adjustment of land titles within the limits of New Mexico.

6. This petitioner avers that the title to said grant was complete and perfect at the date when the United States acquired sovereignty in New Mexico; and that this petitioner has succeeded in part to the rights of the original grantee, the said Antonio Gutierrez.

4 7. This petitioner further avers that to the best of his information and belief the arroyo del alamos which is hereinbefore mentioned as the northern boundary cannot now be identified, probably owing to changes on the earth's surface which have denuded the arroyo, if it still exists, of all trees and which may have entirely obliterated the arroyo itself; and that no tradition of its location has been preserved for the reason that this tract of land and one immediately north of it, which had been the property of Joaquin Sedillo, had become united in the ownership of a single person as early as the year 1734.

Your petitioner therefore prays that the validity of the said title may be inquired into and decided by this honorable court and that the same may be confirmed to the heirs and legal representatives of the said Antonio Gutierrez.

J. FRANCISCO CHAVEZ,
Petitioner.

By F. W. CLANCY,
His Solicitor.

5 And be it further remembered that thereafter, to wit, on the 11th day of November, A. D. 1896, an abstract of title was filed in the office of the clerk; which said abstract of title is in the words and figures following, to wit:

6 In the Court of Private Land Claims sitting in the Territory of New Mexico.

J. FRANCISCO CHAVEZ }
vs.
UNITED STATES. }

Abstract of title.

The claimant is unable to present any direct conveyance from the original grantee or from his heirs with which he is in any way connected. He relies upon the papers contained in archive No. 178 in the office of the surveyor-general for New Mexico, to show that the original grantee, Antonio Gutierrez, took possession of the said tract of land and afterwards transferred the same to Diego Padilla, and that said Diego Padilla conveyed said land to Diego Borrego, who in turn conveyed the same to

Nicolas de Chavez, these conveyances being made in the years 1734 and 1736. Claimant files herewith copies and translations in triplicate of said archive No. 178.

Claimant avers that it appears from archive No. 371, in the office of the surveyor-general for New Mexico, that at some time prior to the year 1785 the tract claimed had become the property of Clemente Gutierrez, the said archive No. 371 is a record of proceedings as to the estate of said Clemente Gutierrez, and claimant files herewith copies and translations in triplicate of so much thereof as shows the inventory of all the real estate belonging to said Clemente Gutierrez and the hijuela given to each of the heirs showing their respective shares of said real estate.

Claimant relies upon the following described deeds to connect him with the title of said Clemente Gutierrez and through him with the original title to the grant:

7 Deed of Jose Lorenzo de la Pena, for himself and his sister Mariana and his brother Jose Rafael de la Pena, to Francisco Xavier Chavez, dated September 20th, 1818, for an undivided fifth of the Bosque de los Pinos, bounded on the north by the lands the pueblo of Isleta, on the south by the lands known as those of Los Lentes, on the east by the hills, and on the west by the Rio del Norte, a translation of which deed, made in the year 1855 by the official translator of the office of the surveyor-general for New Mexico, is now on file in this court in case No. 64, and triplicate copies thereof are filed herewith.

Deed from Francisco Sarracino, representing his mother, Maria Luisa Gutierrez, one of the children of Clement Gutierrez, to Francisco Xavier Chavez, for an undivided interest in the ranch of the Bosque de los Pinos, bounded on the north by the league of the pueblo of Isleta, on the south by residents of Valencia, on the east the plain, and on the west the Rio del Norte, dated October 19, 1821, a translation of which deed, made in the year 1855 by the official translator of the office of the surveyor-general for New Mexico, is now on file in this court in case No. 64, and triplicate copies thereof are filed herewith.

A deed from Juan Nepomuceno Gutierrez and Apolonia Gutierrez to validate the sale made by their father, Lorenzo Gutierrez, of the portion to which he and Lorenzo Gutierrez were entitled in the Bozque de los Pinos, dated December 27th, 1839, a translation of which deed, made by the official translator of the office of the surveyor-general of New Mexico in the year 1855, is now on file in this court in case No. 64, and triplicate copies thereof are filed herewith.

Claimant avers that the originals of the three deed' above described were filed in the office of the surveyor-general in 1855, and that they appear to have been withdrawn from that office by J. Bonifacio Chavez on the day of , 187 , and can not now be found, although the official translations made at that time have been preserved.

The said Francisco Xavier Chavez, to whom the said deeds were made, was the grandfather of this claimant, and claimant has inherited from his said grandfather an interest in the property conveyed by said deeds.

8 And be it further remembered that thereafter, to wit, on the 27th day of October, A. D. 1897, an answer was filed in the office

of the clerk, which said answer is in the words and figures following, to wit :

9 In the Court of Private Land Claims, Santa Fe district, 1896.

J. FRANCISCO CHAVEZ }
vs. } No. 274.
UNITED STATES. }

Answer.

Comes now the United States, by its attorney, Matt. G. Reynolds, and for answer to the petition filed in the above-entitled cause, says: That it has not sufficient information on which to base a belief as to whether or not it is true, as alleged in said petition, that on November 5, 1716, one Antonio Gutierrez presented to Captain Felix Martinez, the then governor and captain-general of New Mexico, his petition asking for a grant of land below Isleta, as described in plaintiff's petition; and therefore prays that petitioner be held to make strict *proof* thereof.

Further answering, defendant states that it has not sufficient information on which to base a belief as to whether or not it is true, as stated in plaintiff's petition, that the said governor, in the name of the King, made to the said petitioner the grant asked for, as described in plaintiff's petition, and directed Captain Baltazar Romero to place said petitioner in possession. Defendant therefore prays that said petitioner be held to make strict proof of said allegation.

Defendant denies that said Antonio Gutierrez entered into the possession of said land, as alleged in plaintiff's petition; and further denies that he is the lawful successor in title from that time down to the present, having had continuous, peaceable, and uninterrupted possession of the land embraced in said grant.

Defendant, further answering, denies that the title to said grant was complete and perfect at the date when the United States acquired sovereignty of New Mexico, and further denies that plaintiff has succeeded in part to the rights of the said Antonio Gutierrez, or that he has held or claimed to hold under the said Antonio Gutierrez.

Defendant admits that no claim for said grant has heretofore been considered or acted upon by Congress, or the authorities of the United States, or been heretofore submitted to the authorities constituted by law for the adjustment of land titles within the limits of New Mexico.

As to all other allegations of plaintiff's petition, defendant shows that it has no information to enable it to found a belief as to the truth or falsity of the same, and defendant therefore denies said allegations and each of them, and asks that plaintiff be put to strict proof thereof.

Now, having fully answered, defendant prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

Respectfully submitted.

MATT. G. REYNOLDS,
U. S. Attorney.

11 And be it further remembered that thereafter, to wit, on the 13th day of November, 1896, the petition of the pueblo of Isleta, to be made copetitioner, was filed in the office of the clerk; which said petition is in the words and figures following, to wit:

12 THE UNITED STATES OF AMERICA.

In the Court of Private Land Claims sitting at Santa Fe, New Mexico.

J. FRANCISCO CHAVEZ }
vs.
UNITED STATES. }

To the honorable chief justice and associate justices of said court:

Your petitioner, the pueblo of Isleta, a body corporate, situated in the county of Valencia, Territory of New Mexico, respectfully prays to be allowed to offer in this cause, as a copetitioner with the said J. Francisco Chavez, and adopts as its own, all of the allegations of the petition of said J. Francisco Chavez, heretofore filed herein, with the same effect as though they were here at length represented, and in terms made applicable to this petitioner, the same as in said petition they are applicable to said J. Francisco Chavez, consenting and agreeing that the answer filed on behalf of the respondents may be taken and considered as our answer to the claim of this petitioner, the same as though it had appeared originally as a copetitioner with said Chavez; and join in the prayer of the petition of said Chavez that the validity of the title therein set off may be inquired into and decided by this honorable court, and that the same may be confirmed to the heirs and legal representatives of Antonio Gutierrez.

G. L. SOLIGNAC,
Attorney for the Corporation of the Pueblo of Isleta.

13 And be it further remembered that on the 13th day of Nov., 1897, the same being a day of the regular May term, 1897, holden at the city of Santa Fe, Territory of New Mexico, the following among other proceedings were had, to wit:

J. FRANCISCO CHAVEZ }
vs.
THE UNITED STATES. } No. 274. Antonio Gutierrez grant.

This cause coming on to be heard upon the petition of the pueblo of Isleta on file in this cause, and being submitted by counsel, G. L. Solignac appearing for said petitioner and W. H. Pope, esq., assistant United States attorney, appearing for defendants, the court being now sufficiently advised in the premises, grants the prayer of said petition.

It is therefore ordered by the court that said pueblo of Isleta be, and it is hereby, permitted to come into this cause as a copetitioner with said J. Francisco Chavez.

6 THE U. S. VS. J. FRANCISCO CHAVEZ AND PUEBLO OF ISLETA.

14 And be it further remembered, that on the 5th day of May, 1897, the same being a day of the regular May term, 1897, of said court, the following among other proceedings were had, to wit:

J. FRANCISCO CHAVEZ }
vs. } No. 274. Antonio Gutierrez grant.
UNITED STATES. }

The above-entitled cause now coming on to be heard there appeared Frank W. Clancy, esq., for the plaintiffs; W. H. Pope, esq., appeared for the said defendant, The United States; G. L. Solignac, esq., representing the Pueblo of Isleta. The parties announcing themselves ready, the trial of the cause was proceeded with, and the said cause not being completed the further hearing of the same was postponed until to-morrow.

15 And be it further remembered that thereafter, to wit, on the 6th day of May, A. D. 1896, the same being a day of the regular May term, the following among other proceedings were had, to wit:

J. FRANCISCO CHAVEZ }
vs. }
UNITED STATES. }

The above-entitled cause now coming on to be heard, all the attorneys in the cause being present, all the testimony in said cause was presented and the arguments were postponed until to-morrow.

16 And be it further remembered, that on the 7th day of May, 1897, the same being a day of the regular May term, 1897, of said court, the following among other proceedings were had, to wit:

J. FRANCISCO CHAVEZ }
vs. } No. 274. Antonio Gutierrez grant.
THE UNITED STATES. }

The above-entitled cause now coming on to be further heard, all the attorneys in the cause being present, after hearing the arguments of the counsel the court took the cause under advisement.

17 On the trial of said cause the following testimony, oral and documentary, was offered and introduced:

18 In the Court of Private Land Claims, Santa Fe, New Mexico, May term, 1897.

J. FRANCISCO CHAVES AND THE PUEBLO OF ISLETA }
vs. } No. 274.
THE UNITED STATES. }

J. FRANCISCO CHAVES AND THE PUEBLO OF ISLETA }
vs. } No. 275.
THE UNITED STATES. }

On May 5th, 1897, the above-named cases came up for trial, and the following proceedings were had therein in open court:

Appearances: Frank W. Clancy, esq., for J. Francisco Chaves; G. L. Solignac, esq., for the Pueblo of Isleta; William H. Pope, esq., assistant United States attorney, for the Government.

Mr. CLANCY. I will read the petition.

Mr. CLANCY. We offer in evidence archive number 315, from the office of the surveyor-general of New Mexico (marked "Plaintiff's Exhibit A").

Also archive number 178 (marked "Plaintiff's Exhibit B").

Also a portion of archive number 371, that is, all of that archive that shows the inventory of the real estate belonging to Clemente Gutierrez and giving to each of the heirs their respective parts of the r'al estate (marked "Plaintiff's Exhibit C").

We also offer in evidence a deed made September 20th, 1818, by Jose Lorenzo de la Pena, for himself and his sister, Mariana, and his brother, Jose Rafael de la Pena, to Francisco Xavier Chaves, for an undivided fifth of the Bosque de los Pinos, this being an official translation made in the year 1855 by the official translator of the office of the surveyor-general for New Mexico (marked "Plaintiff's Exhibit D").

Also offer in evidence a deed from Francisco Sarracino, representing his mother, Maria Luisa Gutierrez, one of the children of Clemente

Gutierrez, to Francisco Xavier Chaves, for an undivided interest
19 in the ranch of the Bosque de los Pinos, dated October 19th,

1821, and of this deed we offer an official translation made by the official translator in the office of the surveyor-general for New Mexico, in the year 1855 (marked "Plaintiff's Exhibit E").

We also offer in evidence the translation of a deed made by the official translator of the office of the surveyor-general for New Mexico in the year 1855, from Juan Nepomuceno Gutierrez and Apolonia Gutierrez, to validate a sale made by their father, Loranzo Gutierrez, in the Bosque de los Pinos, dated December 27th, 1839 (marked "Plaintiff's Exhibit F").

We also offer in evidence an original deed, or document of evidence of title at least, dated May 3rd, 1808, from Lorenzo Gutierrez, in favor of the Indians of the Pueblo of Isleta (marked "Plaintiff's Exhibit G").

We also offer in evidence a report by Manuel Luccero, an alcalde, to the governor of New Mexico, dated June 14th, 1826, as to certain disputes among the Indians, with regard to other lands in question here (marked "Plaintiff's Exhibit H").

We also offer in evidence an official certificate made by Jose Antonio Chaves Duran, who was an alcalde mayor of the Pueblo of Isleta, as to the making of a measurement of these lands which are now claimed in these two cases, on the west side of the river between the lands of Isleta and the lands of Los Lentes (marked "Plaintiff's Exhibit I").

Mr. FOPE. We shall move to strike them out if upon an examination they are not competent.

MAY 6TH, 1897, 10 A. M.

J. FRANCISCO CHAVES, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiff, testified, upon direct examination, as follows:

By Mr. CLANCY:

Q. What is your name, age, and residence?

A. J. Francisco Chaves; my residence is Progresso, in Valencia County, New Mexico; age, nearly 64.

Q. Are you acquainted with the tract of land that is commonly known as Bosque de los Pinos, in Valencia County, New Mexico; and, if so, when did you first become acquainted with that tract of land?

A. Yes, sir; I think about 1839 I became personally acquainted 20 with it; at that time I lived at Los Padillas, which is now in the county of Bernalillo, the place of my birth.

Q. Who lived at the Bosque de los Pinos at that time?

A. Retainer of my grandmother's, who was then the owner of the place, by the owner, Jose Manuel Olgun.

Q. Who was the father of your grandfather?

A. Francisco Xavier Chaves.

Q. When did he die, if you know?

A. I only know by the records; I think in 1829, before I was born.

Q. From what has been told you and the family, do you know where he lived at the time of his death and for some years before that time?

A. He lived always at Los Padillas.

Q. Then he never resided at Bosque de los Pinos?

A. Never resided at Bosque de los Pinos.

Q. Do you know what, if anything, he did with the possession of Bosque de los Pinos before his death?

A. He possessed it, farmed it, kept cattle and sheep upon it; it was wooded from there to Los Padillas, a large body of timber there at that time; there is a pretty good sized body of timber there now.

Q. Since the time that you have had personal knowledge of that property who has had possession and control of it from that time down to the present?

A. My father, subsequently my mother, after my father's death in 1844, and then my mother married Dr. Connolly, and then it went to her heirs after her death. If you desire the names of the children I will give their names.

Q. Has that possession been in any way disturbed or encroached upon by other people?

A. Never.

Q. What are the boundaries of that particular piece of land called the Bosque de los Pinos?

A. Bounded on the north by the Isleta Indian Pueblo lands; on the east by the old river bed; a stone marks the northeast boundary; and on the south by the town of Peralta; on the west by the present river.

Do you know under what title or deeds of conveyance, if any, your family has claimed and possessed that tract of land?

A. Yes, sir; we claim title under, I believe, Clemente Gutierrez and his heirs.

21 Q. Who were the owners of that piece of land?

A. At the time that my grandfather purchased—

Q. That is, you claim through his heirs?

A. There are several of them; Clemente Gutierrez, he already died; it was through his will.

Q. Examine this paper which I have offered in evidence in this case and marked "Plaintiff's Exhibit D, E, and F," and state if they are translations of the deeds from the Gutierrez heirs under which your family claim the Bosque de los Pinos.

A. Yes, sir, I believe they are correct translations of the copies of the deeds made to my grandfather.

Q. Do you know what has become of the originals of these deeds?

A. I do not, unless they are here in the surveyor-general's office.

Q. Have you made any search for them among your papers or those of your family?

A. Yes, sir; they are not at our place at all. I will state here that when the rebel troops had possession of our house in 1862—about the month of April, 1862—that nearly every paper, we had a very large amount of property, was destroyed, and a great many valuable in real estate were discovered afterwards among the corrals and the outhouses. Some are entirely lost.

Q. Who was J. Bonifacio Chaves?

A. He was my youngest brother.

Q. Is he living or dead?

A. He is dead.

MR. CLANCY. Mr. Pope, will you admit that the records in the office of the surveyor-general show that the originals of these deeds were withdrawn from that office by J. Bonifacio Chaves about the year 1871, which accounts for their absence from the files of that office, although it does not account for what became of them afterwards?

MR. POPE. I will admit this.

Q. Have you made at any time, or caused to be made, search among the papers of your brother's for the originals of these deeds?

A. Yes, sir; I have, and I have not discovered anything. His wife became quite sick and she died in this city six or seven years ago, and I asked her to give me all the papers of my brother had that belonged to our family, and she gave me some papers, but none of these papers were among them, because I have all the papers that I got from her.

22 Q. Are you acquainted with the lands on the west side of the present river lying between the pueblo grant to the Pueblo of Isleta and the lands of Los Lentes?

A. Yes, sir.

Q. In whose possession have these lands been since you have known them?

A. Well, originally—many years ago, say probably forty years ago—they were held chiefly by the people of the town of Los Lentes. There is a river runs up very near the sand hills and from that point south it is called Los Charcos, means the pools, water collects, and runs, overflows the aequia and remains for a long time, and close to the sand hills the Indians occupied a place there and the Indians of Isleta, but now, but most of them are within, I think, a mile of the town of Los Lentes, are occupied by the Indians of the town of Isleta, about a mile from the present site of Los Lentes is occupied by the people of Los Lentes, and from there north, probably two miles and a half, I do not know, well, about four miles, is occupied entirely by the Indians now.

Q. Have you ever heard that stretch of land called the compra?

A. Yes, sir; always that land has been called the compra; that is the way they spoke of that land.

Q. Have you ever known or heard from whom they purchased these lands?

A. No, I never.

Q. That is all.

Mr. POPE. That is all.

Mr. CLANCY. It is admitted by the United States to be a fact that the Pueblo of Isleta has had open and notorious possession and use of lands on the west side of the Rio Grande along between the boundary of the pueblo and the lands of the Los Lentes as far back as the memory of the oldest man living within the pueblo can extend, and that such possession and use have been claimed to be under a purchase from the heirs of Clemente Gutierrez, of which some documentary evidence has been presented in the paper executed by Lorenzo Gutierrez, dated May 3rd, 1808, and that said paper which is marked "Plaintiff's Exhibit G" and also Plaintiff's Exhibits H and I come from the custody and control of the officers of said pueblo, who have had them as far back as memory can extend.

23 Mr. CLANCY. I desire to offer in evidence the original petition and grant to Ana de Manzanares for the tract of land commonly known as the San Clemente grant, and also the decree of this court confirming the claim for that grant (marked "Plaintiff's Exhibits J and K").

Mr. POPE. No objection.

Q. Col. Chaves, are you familiar with the section of country where are situated the lands in question in this case known as the San Clemente and Isleta grants?

A. Yes, sir; I am.

Q. And with the location of towns and other natural objects in that vicinity?

A. Yes, sir.

Q. Will you examine this sketch map and state where upon that the location of Los Lunas, Los Lentes, Los Pinos, the Rio Grande, and its old bed, whether they are approximately accurate or not?

A. This map that is made is substantially correct; it shows the lines of the Isleta grant and the lands in question, the San Clemente grant, and the Jose Sedillo grant, as far as I am able to ascertain the grant of Gutierrez; it also shows the Rio Grande now, and also the old bed of the river as it ran many years ago, beyond the memory of any living man, and the Rio Puerco, also Los Lunas and Los Lentes.

Mr. POPE. Q. Your only knowledge of the location of the Sedillo and Gutierrez grants is derived from these title papers you presented here?

A. Yes, sir; and the gentleman's (Mr. Pope) argument at the last term of court.

Mr. CLANCY. I will offer this sketch map in evidence (marked "Plaintiff's Exhibit L").

SHERWARD COLEMAN, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified upon direct examination by Mr. Clancy as follows:

Q. What is your business in life?

A. I am surveyor by occupation.

Q. Have you had occasion in connection with your business as surveyor to make any examination of the section of country just south of the pueblo of Isleta in this Territory?

A. Yes, sir.

24 Q. Can you from the knowledge derived from that examination stat' what is the distance from Los Lentes to the pueblo of Isleta?

A. At the time I made this survey it was six miles 39 chains and 54 links in a measured line from the church of the pueblo of Isleta with the old ruins of San Clemente; these old ruins of San Clemente are just below the town of Los Lentes, I should say about 600 yards from the chapel.

Q. In a straight line from the chapel to the ruins?

A. In a straight line in a southeasterly direction.

Q. In a north and south direction about how far is the chapel of Los Lentes to these old ruins?

A. Not over two or three hundred yards, I should think, without making a measurement of the place in question.

Q. That is all.

Mr. POPE. That is all.

SANTA FE, NEW MEXICO, June 4th, 1897.

I hereby certify that the above and foregoing six and a part pages contain a full, true, and correct transcript of all the testimony offered in evidence in the above-named cases.

W. J. MCPHERSON,
Official Stenographer C. P. L. C.

25

PLAINTIFF'S EXHIBIT A. ARCHIVE 315

[Translation.]

1.

No. 449.

1716

To the governor and captain-general:

I, Captain Antonio Gutierrez, a resident of the town of Albuquerque and a native of this Kingdom, appear before you in due legal form, and I state that, being very much in need of lands on which to plant in order to support my family, and also to the end that my sheep may have room to scatter out, and there being an uncultivated and unoccupied tract of lands below Ysleta, apparently at a distance of two leagues, which formerly was held by Cristobal de Tapia, of which tract will you be pleased to make me a grant in the name of His Majesty in the same manner as it was held by said Cristobal de Tapia, and, is you be pleased to grant it to me, will you also order that the real possession be given me, designating to me boundaries and landmarks, in order that no prejudice may result to me in its possession?

Wherefore I ask and pray, with due humility, that you will be pleased to make me the grant that I ask for in the name of His Majesty, as one who represents his royal person, and I swear in the name of God our Lord, and by the sign of the Holy Cross, that this my petition is not in bad faith, and whatsoever is necessary, etc.

ANTONIO GUTIERREZ. [SCROLL.]

NOTE.—I ask and pray that the boundaries belonging to said tract be designated to me—on the north an arroyo with some cottonwood trees

that comes down from the hills, on the south the pueblo of San Clemente, on the east the Del Norte River, and on the west the hills of the Puerto River; and I swear in due legal form that my petition is not in bad faith, and whatever is necessary.

ANTONIO GUTIERREZ. [SCROLL.]

Presentation.

At the town of Santa Fe on the fifth day of the month of November, in year one thousand seven hundred and sixteen, before me, Captain Felix Martinez, Governor and Captain-General of this Kingdom and provinces of New Mexico and castellan of its forces and garrisons for His Majesty, it was presented by the party therein named.

Decree and grant.

And it having been examined by me, I treated it as properly presented in accordance with law, and, in view of the fact that it is His Majesty's will that his lands should be settled and fortified, in his royal name I make to the petitioner the grant that he asks for, as he describes it and as Cristobal de Tapia formerly enjoyed it, without prejudice to a third party who may have a better right, and I command Captain Baltazar Romero that as soon as he be notified with this my decree he shall place the petitioner in real possession; and this shall serve him as a sufficient formal title for his protection, and when these proceedings shall have been had he will transmit this grant and possession to my civil and military secretary in order that he make a certified copy thereof, and that this original petition remain in the said archives; and in witness thereof I signed it with my civil and military secretary.

FELIX MARTINEZ. [SCROLL.]

Before me,

MIGUEL TENORIO DE ALBA, [SCROLL.]

Civil and Military Secretary.

[Spanish copy.]

Senor Gober. y Captn. General:

El Capitan Antonio Gutierrez, vecino de la villa de Albuquerque y originario de este rno., ante Vsa. paresco en la major forma que haya lugar en derecho y digo: Alládome mui desacomodado de tierras en que poder sembrar para mantener mis obligaciones, y juntamente para que mi ganado se explaye, y alládose yermo y despoblado un sitio de tierras abajo de la ysla de Tapia, el qual sitio se a de servir Vsa. haserme mez. de él segun y como lo posecia dicho Xptoval de Tapia, en nombre de su Magd. y juntamente mandará siendo servido de conserdermelo el que se me de la real posesion, señaládome linderos y mojoneros para que posiendo no me pueda pidar (?) perjuicio, por todo lo qual á Vsa. pido y suplico con todo rendimiento sea mui servido conserderme la

merced que pido en nombre de su Magestad, como quien representa su divina imagen y juro por Dios nuestro Señor y la señal de la santa cruz, esto mi escrito no ser de malicia y en lo necesario, &a.

ANTONIO GUTIERRES.

OTROS.—A Vsa. pido y suplico se me señalen los linderos que son pertenientes á dicho sitio, por el norte un arroyo de Alamos que baja de las lomas, por el sur el pueblo de San Clemente, por el oriente al río del Norte, y por el poniente las lomas del río Puerco, y juro en forma de derecho mi escrito no ser de malicia y en lo necesario.

ANTONIO GUTIERRES.

PRESENTACION.—En la villa de Santa Fe, en cinco días del mes de noviembre de mil setecientos y diez y seis años, ante mí el Capitán 27 Don Felix Martinez, Gobernador y Capitán General de este reyno y provincia del Nuevo Mejico y castillano de sus fuerzas y presidios por su Magestad auto de merced, la presentó el contenido y por mi vista la hubo por presentada en quanto ha lugar en derecho y en atención á ser la mente de su Magestad el que sus tierras se pueblen y fortalecen, en su real nombre le concedo la merced que el suplicante pide como lo expresa y antiguamente gosaba Xptobal de Tapia, sin perjuicio de tercero que mejor derecho yenga y mando al Capitán Baltazar Romero que luego que sea requerido con este mi decreto, meta en posesión real al suplicante y este le sirva de bastante título en forma para su resguardo; y hechas las diligencias esta merced y posesión las remita á mí secretario de gobernación y guerra para la testimonie; y quede este original en el dicho archivo; y para que conste, lo firmo con mi Secretario de Gobernación y Guerra.

FELIX MARTINEZ.

Ante mí:

MIGUEL THENORIO DE ALBA.

Secretario de Gobernación y Guerra.

28

PLAINTIFF'S EXHIBIT B, ARCHIVE 178.

Certified copy was made of these titles in the year of 1736 on August 31.

SANCHEZ. [RUBRIC.]

Let it be notorious and know all who this letter of real sale may see that there appeared before me Captain Juan Gonzales Bas, alcalde mayor and war captain of the said villa and its jurisdiction, and as I say personally appeared Don Diego Vasquez Borrego, whom I certify I know, and he said: That he gave and in effect did give in real sale to Don Nicolas de Chaves a tract of land for the pasturage of small stock, neat cattle, and horses, and also agricultural lands which he acquired by real sale from the heirs of Joaquin Sedillo, and he also said that he gave and did give together with this real sale and annexed thereto a donation which to the said Don Diego Basques Borrego was made by Diego Padilla, in which appeared the free and general administration in order that he might make use according to his will of the said tract, the one and the other situate below Isleta, commonly called San Martin, and as it appears by his instruments their boundaries are on the north

lands of the pueblo of Isleta and on the west the Rio Puerco, on the south the house of the rancho of Diego Padilla, the said donation being included in this conveyance, and on the east the Rio Grande, and as I say the said Diego Vasques Borrego makes and gives the said sale to the said Don Nicolas de Chaves in the price and sum of six hundred dollars, which the said Borrego acknowledges to have received to his content and satisfaction, and he says he is contented, paid, and satisfied, and in regard to which he delivers his instruments of title and he renounces his own right and domicil and the laws of non numerata pecunia proof and payment, and that of things held in common which treats of the one-half of the just price; that he gives them free from all tax, tribute, and other burthen in order that he may enjoy them for himself, his children, heirs, and successors, and that in case the said tract is worth more or may be worth more he makes him gift and donation of the same, pure, mere, irrevocable, which the law calls inter vivos; in which he renounces all the laws which may be in his favor, and no suit nor demand shall be brought against the same by the said Don Diego Borrego, his children, heirs, and successors, and in case any should be brought that they be not heard either in court or out of it; and he gives all power necessary to the justices of His Majesty in order that with all rigor of law they may require and compel him to the fulfilment of this instrument as if it were by definitive decision of a competent judge; and if any suit be brought against the said lands or tract he will appear for the defense until he leaves him in quiet and peaceable possession; and for its warranty he pledges his person and his property, real and movable, that which he now has and that which he may hereafter have, with regard to which he renounces the law sit cumbenerit and jurisdiccionen; thus he executed it before me, the said alcalde mayor, to which I certify, and he signed it with me and two assisting witnesses acting before me by delegated authority (juez receptor) on the present paper because the stamped paper is not current in these parts; it is done on the sixteenth day of August of the year one thousand seven hundred and thirty-six,

30 DIEGO BASQUES BORREGO. [RUBRIC.]
JU. GONZALES BAS. [RUBRIC.]

Witness:
PHELIP BARELA. [RUBRIC.]
ISIDRO SANCHEZ. [RUBRIC.]

31 Se sacó testimonio de estas escripturas el año de 1736 *as.* en 31 de Agosto.
Foxas 8, N°. 319.

SANCHEZ. [RUBRIC.]

Sea notorio, y sepan quantos esta carta de benta rl. vieren, como compareció ante mi el Capp. Ju. Gonzales Bas, alcalde mayor y capp. á guerra de dha. villa su jurisdicion, y como digo compareció Dn. Diego Vazquez Borrego, á quien doy fe conosco, y dixo que dava, y con efecto dió en benta rl. á Dn. Nicolas de Chaves un sitio de tierras para agostar ganados menores, y mayores, y caballadas, con tierras de favor de pancoxer, el qual huvo por benta rl. á los erederos Juachin Sedillo, con

mas dixo que dava y dió junto con esta benta real en ella anexo, vna donazion que al dho. Dn. Diego Basques Borrego le yso Diego Padilla, en la qual consta la libre y genl. administracion para de ella vsara á su voluntad el qual sitio vno, y otro sitio abajo de la ysleta que comunmente llaman San Martin, y como consta por sus ystrumentos y corren sus linderos por la parte de norte con tier as del Pueblo de la Ysleta, y por el poniente con el rio Puerco, por el zur con la caza del rancho de Diego Padilla entrando en esta escritura la referida donacion, y por el oriente con el rio Del Norte, y como digo, dha. benta se la ase y da dho. Diego Vasques Borrego, al susodho. Da. Nicolas de Chaves por el precio y quantia de seys sientos ps., los que confiesa dho. Borrego aber resebido á su contento y satisfacion de que se da por contento, pagado, y satisfecho, sobre que para ello le entrega sus ystrumentos y renuncia su proprio fuero y domisilio, y las leyes de la numerata pecunia, preuba y paga y la de mancomunidad que abla sobre la mitad del justo precio que se las da libres de todo senso tributo, y otra ypoteca para que las gose por si sus hijos erederos y susesores, y que si acaso dho. sitio valga mas ó baler pueda, le ase gracia y donacion pura, mera, yrebocable que el derecho llama yntervivos, sobre que renunsias todas las layes que á su favor pueda alegar, sobre que no le será puesto pleyto ni demanda alguna por el dho. Dn. Diego Borrego, sus hijos erederos, y susesores, y que si acaso se lo pusieren que no sean oydos en jyycio ni fuera del, sobre que da poder quan bastante se requiere á las justicias de su Magd., para que con todo rigor le compelan y 32 apremien al cumplimiento de esta escritura como si fuera por sentencia definitiva de jues competente *de Jues Competente*, y que si algun pleyto se les ofresieren sobre las dhas. tierras ó sitio, sacarara la cara para defenderlo asta dejarlo en quieta y pasifica posesion, y al saneamiento obliga su persona y bienes rayses y mueble abidos y por aber, sobre que renunzia la ley sit cumbenerit e jurisdicionen; así lo otorgó ante mi dho. alcalde mayor, de que doy fee, y lo firmó conmigo, y dos testigós de mi asistencia auctuando ante mi como Jues Receptor; en el presente papel porque el sellado no corre en estas partes; es fecho, en dies y seys de agto. de mil setesientos treynta y seys as.

DIEGO BASQUES BORREGO. [RUBRIC.]
JU. GONZALEZ BAS. [RUBRIC.]

Tto: PHILIP BARELA. [RUBRIC.]
Tto: YSIDRO SANCHEZ. [RUBRIC.]

33 *Carta de donacion.*

En esta Villa de San Phe. de Alburquerq., en siete dias del mes de henero del año de mil setesientos y treynta y quattro, ante mi, el Capp. Ju. Gonzalez Baz, alcalde mayor y capp. á guerra de dha. villa y su jurisdicion, comparesió Diego Padilla, á quien doy fee conosco, quien delante de dos testigos dixo: que dava y dió graciosamente á Dn. Diego Borrego, es, á saber, un pedaso de tierra de el qual, como mas largamente consta, tubo, y pose en donacion que á su favor de dho. Padilla le otorgó el Capp. Antto. Gutierrez; y corren sus linderos por el norte con tierras de Joachin Sodillo; por el oriente, con el rio Del Norte; por

el sur con tierra de dho. Diego Padilla, sirviendo de señal en dho. lindero la mediania que ay de dos casas que tenia fabricadas dho. Padilla, proximas al lindero que tenia en la referida donacion; y por el poniente con el lindero que la escritura resa de todo el sitio que dho. Padilla tiene y como digo: de dhas. tierras le ase gracia y donacion, y traspasa su proprio fvero, domicilio, y senorio el sobre dho. Diego Padilla, con consentimiento de su esposa e hijos, en la persona de el susodho. Dn. Diego Borrego, sin mas yntereza que su yntima voluntad, para que las gose por si, sus hijos y erederos, aora y siempre, sobre que es dha. donacion pura, mera, perfecta, e yntreboicable, que el derecho llama yntervibos, y en que renuncia su propio fvero, domicilio y besindad y las leyes de la numerata pequenia, prueba, y paga; y que se las da libres de todo senso, tributo, y otra yptoteca para que pueda benderlas, cambiarlas, y enagenarlas, á la persona que fuera su voluntad, y que renuncia todas las leyes que á su fabor puedan ablar, con la mayor de el derecho; sobre que no se le pondrá pleyto ni demanda, en ningun tiempo, por si, sus hijos erederos y susesores, y que si á caso se lo pusieren que no sean oydos en jucio ni fuera de el, y que da poder bastante á las justicias de Su Magd. de qualesquiera parte, para que con todo rigor le compelan y apremien al cumplimiento de esta donacion, como si fuera por sentencia difinitua de Jues Competente, pasada en cosa juscada; y al cumplimiento y saneamiento obliga su persona y bienes muebles, rayses, abidos y por aber, y renuncia todo quanto

34 á su fabor pueda alegar, y la ley si cumuenirit e jurisdiccionen.

Asi lo otorgó ante mi dho. alcalde mayor, de que doy fee, y lo firmó connmigo y dos testigos de mi asistencia, á falta de escribano publico y real que no lo ay en este reyno.

JU. GONSALEZ BAS. [RUBRIC.]
DIEGO PADILLA. [RUBRIC.]

Ttò.: ANTTO. MONTOYA. [RUBRIC.]

Tto.: YSIDRO SANCHEZ. [RUBRIC.]

[RUBRIC.]

In this villa of San Felipe de Albuquerque, on the seventh day of January of the year one thousand seven hundred and thirty-four, before me, Captain Juan Gonzalez Bas, alcalde, mayor and war captain of the said town and its jurisdiction, personally appeared Diego Padilla, whom I certify I know, who, in the presence of two witnesses, said that he gave and did give freely to Don Diego Borrego, to wit, a piece of land which, as will hereinafter more fully appear, he had and possesses by donation, which, in favor of the said Padilla, was made by Captain Antonio Gutierrez, and its boundaries are: On the north, lands of Joaquin Sedillo; on the east, the Rio Grande; on the south, land of the said Diego Padilla, there serving as a landmark on the said boundary, the midway line between the two houses which the said Padilla built near the boundary line on the said donation, and on the west with the boundary line called for in the title papers of the whole tract which the said Padilla has; and as I say of the said lands, he makes gift and donation and conveys his own right, donicil, and seign'ory, the said Diego Padilla, with the consent of his wife and children, to the said Don Diego Borrego, without

any consideration other than his own will, in order that he may enjoy them for himself, his children, and heirs now and forever, and the said donation is pure, mere, perfect, and irrevocable, which the law calls inter vivos, and in which he renounces his own right, domicil, and residence and the laws of non numerata pecunia proof and payment, and he gives them to him free of all tax, tribute, or other burthen, in order that he may sell them, exchange them, and alienate them to any person he may please, and that he renounces all the laws which may lie in his favor, together with the general law of right; and against him no suit nor demand shall ever be brought, either by himself or by his children, heirs, and successors, and in case they should bring any, let them 36 not be heard either in court or out of it; and that he gives sufficient power to the justices of His Majesty of any place to compel and oblige him with all rigor to the fulfillment of this donation as if it were by definitive decision of a competent judge given in a matter adjudged; and to the fulfillment and warranty he binds his person and the property, movable and real, which he now has and that which he may hereafter have; and he renounces all that which in his favor he might allege, and the law si cum veni rit and jur'sdic'ionem. Thus he executed it before me, the said alcalde mayor, to which I certify, and he signed it with me and two assisting witnesses in the absence of a notary public or royal, of which there is none in this Kingdom.

JU. GONSALES BAS. [RUBRIC.]
DIEGO PADILLA. [RUBRIC.]

Witness :

ANTO. MONTOYA. [RUBRIC.]

Witness :

YSIDRO SANCHEZ. [RUBRIC.]

37 *Carta de escritura de Venta Real á favor de Dn. Diego Borrego.*
[RUBRIC.]

En esta villa de San Phe. de Alburquerq., en onse dias de el mes de enero de el año de mil setesientos y treynta y quatro años, ante mi el Capp. Ju. Gonsales Bas, alcalde mayor y capp. á guerra de dha. villa y su jurisdicion, comparesio Anto. Sedillo, hijo lexitimo de Joaquin Sedillo y eredero forzoso de el dho., quien dijo: que dava y dió en benta real un sitio que está en el rio abajo, y abajo de el pueblo de la Ysleta, el qual sitio es para agostar ganados mayores y menores, con mas tierras labradas y eriasas para poder laborear, y como digo da, y dió el dho. Anto. Sedillo en benta real el referido sitio con pareser y consentimiento de su madre y de otros ermanos quienes le amplearon facultad para ello, por aber muerto adeudado dho. Joachin y para remunerar la cantidad que denia; y confiesa dho. Antonio Sedillo que dho. sitio lo ubo su padre, por merced, en nombre de su magd., parte y parte que ubo y poseya en benta real como consta por los cinco ystrumentos que entregó; y de el dho. sitio corren los linderos por el norte con el lindero de la legua del dho. Pueblo de la Ysleta; por el oriente con el rio de el Norte; por el sur con un alamo *corte* que llaman algunos alamo de la culebra; y por el poniente con la sera de el rio Puerco; y dise: que dho. sitio se lo da á Dn. Diego Borrego, por el precio y quantia de

dos sientos pesos, en reales, los que confiesa dho. Antto. Sedillo aber
reseuido á su contento y satisfacion, de que se da por contento, pagado
y satisfecho, y que si mas bale, ó bale pueda, le ase gracia y donacion
pura, mera, perfecta, yreboicable, que el derecho llama ynterbiuos; sobre
que renuncia su propio fvero, domisilio y vesindad, y las leyes de la
numerata pecunia, prueba, y paga, y la de mancomunidad que abla
sobre la mitad de el justo precio; y que se las da libres de todo senso,
tributo, y otra ypoteca, para que las pueda bender, cambiar y enagenar
como suillos que son, á la persona que fuere su boluntad; y que renun-
cia todas las leyes que puedan ablar a su fabor, y que sobre ello no le
pondrá pleyto ni demanda en ningun tiempo por si, sus hijos erederos
y susesores, y que si acase se lo pusieren, que no sean oydos en
38 en juyco ni fuera del, y q. da poder bastante á las justicias
de su magestad, de qualesquiera parte que sea, para que con
todo rigor le compelan y apremien al cumplimiento de esta escritura,
como si fuera por sentencia difinitiva de Jues Competente, pasada en
cosa juscgada; y al sancamiento de esta escritura obliga su persona, y
biens rayses, y muebles abidos y por aber, sobre que renuncia todo
quanto á su fabor pueda alegar y la ley si cunuenirit e jurisdisionen; asf
lo otorgó ante mi dho. alcalde mayor, de que doy fee; y lo firmó comigo
y dos testigos de mi asistencia, á falta de escribano publico y real, que
no lo ay en este reyno.

ANTTO. SEDILLO. [RUBRICA.]
JU. GONZALES BAS. [RUBRICA.]

Tto. YSIDRO SANCHEZ. [RUBRICA.]
Tto. SALUADOR MARTINEZ. [RUBRICA.]

39 *Instrument of real sale of agricultural land to Don Diego Borrego.*

In this villa of San Felipe de Albuquerque, on the eleventh day of the
month of Januari of the year one thousand seven hundred and thirty-
four, before me, Captain Juan Gonzales Bas, alcalde mayor and war cap-
tain of the said villa and its jurisdiction, personally appeared before me
Antonio Sedillo, legitimate son of Joaquin Sedillo, and forced heir of the
aforesaid, who said that he gave and did give in real sale a tract of land
down the river and below the pueblo of Isleta, which tract is for the
pasturage of large and small stock, with some broken lands and some
cultivable and unbroken; and as I say, the said Antonio Sedillo gives and
did give in real sale the said tract, after consultation and with the consent
of his mother and his brothers and sisters, who gave him authority
for the same because the said Joaquin died in debt, and in order to pro-
cure the amount which he owed; and the said Antonio Sedillo acknowl-
edges that the said tract was acquired by his said father in part by grant
in the name of His Majesty and in part acquired and held under real
sale, as shown by five instruments which he delivered; and the boundaries
of the said tract are: On the north the line of the league of the Isleta
pueblo; on the east the Rio Grande; on the south a twin alamo called
by some the Culebra, and on the west the ridge of the Puerco River;
and he says that the said tract he gives to Don Diego Barrego for the
40 price and sum of two hundred dollars in money, which the said
Antonio Sedillo to have received to his content and satisfaction,
and he says he is contented, satisfied, and paid, and that if it is

worth more or may be worth more he makes him gift and donation of it pure, mere, perfect, and irrevocable, which the law calls inter vivos, in which he renounces his own right, domicil, and residence, and the laws non numerata pecunia, proof and payment, and that of things held in common which treats of the one-half of the just price, and that he gives them to him free from all tax, tribute, or other burthen in order that he may sell, exchange, and alienate them as his own, which they are, to whomsoever he pleases; and that he renounces all the laws which may be in his favor; and that no suit nor demand shall ever be brought against him either by himself, his children, heirs, or successors, and in case any shall be brought let them not be heard either in court or out of it; and he gives full power to the justices as His Majesty of whatsoever place, that they may with all rigor of law compel and require the fulfillment of this instrument as if it were by definitive decision of a competent judge passed upon a thing adjudged; and to the warranty of this title he pledges his person and property, real and personal, present and to come; in which he renounces all that may be alleged in his favor, and the law sicutunvenit ejurisdiccionem; thus he executed it before me, the said alcalde mayor, to which I certify, and he signed it with me and two assisting witnesses in the absence of a notary public or royal, of which there is none in this kingdom.

ANTO. SEDILLO. [RUBRIC.]
JU. GONZALES BAS. [RUBRIC.]

Witness:

SALVADOR MARTINEZ. [RUBRIC.]
 ISIDRO SANCHEZ. [RUBRIC.]

41

PLAINTIFF'S EXHIBIT C.

[From Archive 371.]

Autos y ynbentario, divicion y particion de bienes que quedaron por fallecimiento de Dn. Clemente Gutierrez entre su muger y cinco hijos, concluidos en el año de 1785.

Auto y principio de ymbentario.

En la Hacienda de San Ysidro del Pajarito, en treze dias del mes de mayo de mil setecientos ochenta y cinco años, Yo, el mencionado anterior Govor, pasé á la casa y morada de Da. Maria Apolonia Baca, y estando presente, le leí y notifiqué el auto consecutivo á su peticion, sobre lo qe. le receví juramento conforme á dro. para que manifestase todos los bienes raízes, muebles, derechos y acciones que poseia su difunto marido, Dn. Clemente Gutierrez, sin encubrir ni disimular ningunos; de lo que entendida, dixo: que está prompta á poner de manifiesto los que consten y de que tenga noticia, que verificó imbocando á Dios en la forma siguiente:

Pessoas de Pta. Pessoas de la Tierra.

Primeramente, el sitio de Sn. Ysidro del Pajarito, que consta con sus linderos de su respectiva escritura No. 1, e importa	1,200,0
Yd., la cassa y morada qe. fue del difunto Dn. Clemente Gutierrez, constante de diez y ocho piezas, en qe. se incluyan la capilla y sacristia de la hada., excluyéndose de abalno cinco piezas pertenecientes á Dn. José 42 Mariano de la Peña, e igual no. de Dn. Franco Garcia, estimados las diez y seis primeras en	,500,0
Yd., un solar en el mismo sitio que corresponde á una cassa qe. vendió	1,700,0
Passa á la Bta.....	

	Pesos de Pta. Pesos de la Tierra.
Por la Buelta	1,700,0
Dn. Diego Antonio Baca como consta del recivo No. 2, abaluado dho. solar..	,010,0
Yd., un rancho en la birtientes de Navaho, cuyas aguas, tierras, pastos y linderos constan en sus respectivas quatro escrituras No. 3, pasadas por su abaluo, que es de.....	5,600,0
Yd., un rancho abaxo de los linderos del Pueblo de la Isleta llamados, e comunmente. Sn. Clemente, Barrancos y los Pinos, de que se está en posesion aunque no hay documto. de sus linderos, estimado en	1,200,0
Ydn., una auction de tierras en el bosque de José Sanchez en	

Proceedings and inventory, division and partition of the property which was left at the death of Don Clemente Gutierrez among his wife and five children, concluded in the year 1785.

Order and beginning of the inventory.

At the estate of San Ysidro del Pajarito, on the thirteenth day of the month of May of the year one thousand seven hundred and eighty-five, I, the said governor, proceeded to the house and dwelling of Dona Maria Apolonia Baca, and, she being present, I read and notified to her the order following her petition and administered to her the legal oath in order that she might make a statement of all the property, real, personal, rights and shares possessed by her defunct husband, Don Clemente Gutierrez, without concealing or withholding any of the same, and she having understood, said that she was ready to make a statement of that existing and of that of which she has information, which she verified, swearing by God, in the form following :

	Hard dollars. Current dollars.
First. The tract of San Isidro del Pajarito, which is shown with its boundaries in its respective deed No. 1, and it is worth.....	1,200,0
1dem. The house and dwelling which belonged to the defunct Don Clemente Gutierrez, containing eighteen rooms, among which are included the 44 chapel and the sacristy of the estate, excluding from the valuation five rooms belonging to Don Jose Mariano de la Pena and an equal number belonging to Don Franco Garcia, the first sixteen estimated at	,500,0
Idem. A house lot on the side tract corresponding to a house which was sold.	

To be carried forward.....	1,700,0
----------------------------	---------

	Hard dollars. Current dollars.
Brought forward.....	1,700,0
By Don Diego Antonio Baca, as appears by receipt No. 2, the said house lot valued at.....	,010,0
Idem. A ranch at the Virtientes de Navajo, the lands, waters, pastures, and boundaries of which are shown by its four deeds No. 3, respectively, valued at	5,600,0
Idem. A ranch below the boundary of the pueblo of Isleta, commonly called San Clemente, Barrancos, and Los Pinos, of which they have possession, although there is no title deed of its boundaries, estimated at	1,200,0
Idem. A share in lands of the bosque of Jose Sanchez, at	

Se le ha señalado á Da. Maria Apolonia Baca, etc.

	Pesos de Pta. Pesos de la Tierra.
Se le adjudica la mitad del sitio de Sn. Ysidro de Pajarito por su respectivo Abaluo	,600,0
La mitad de la casa de su morada en	,250,0
La mitad de vn solar en el mismo sitio en	,005,0
La mitad del Rancho de Navajo	2,800,0

	Pesos de Pta.	Pesos de la Tierra.
La mitad del Rancho de Sn. Clemente en		,600,0
Ydu. La mitad de las tierras de bosque de José Sanchez, que no tiene tasacion		

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[From Archive 371.]

There has been assigned to Dona Maria Apolonia Baca, etc.

	Hard dollars. Current dollars.
There is adjudged to her one-half of the tract of San Isidro de Pajarito according to its respective valuation	,600,0
One-half of her dwelling house	,250,0
One-half of a house lot on the said tract	,005,0
One-half of the Rancho de Navajo	2,800,0
	*
One-half of the Rancho of San Clemente	,600,0
Idem. One-half of the lands of the bosque de José Sanchez, which is not valued	

47

[From Archive 371.]

Hijuela de Dn. Lorenzo Gutierrez.

Hijuela de Dn. Lorenzo Gutierrez á quien como á hijo y heredero de
su difunto padre Dn. Clemente Gutierrez en la mitad de los bienes
raízes, muebles y dependencias que se contienen en el ynbentario le tocan
y perteneceen, etc.

Pesos de Pta. R. G. Pesos de la Ta. R. G.

Se le adjudican la quinta parte de la mitad del sitio de Sn. Ysidro de Pa- jarito	,120,0,0
La quinta parte de la mitad de un solar en el mismo sitio	,001,0,0
La quinta parte de la mitad del Rancho de Navajo en	,560,0,0
La quinta parte de la mitad del Rancho de San Clemente en	,120,0,0
La quinta parte de la mitad de las tierras del bosque de José Sanchez	

48

[From Archive 371.]

Schedule of Don Lorenzo Gutierrez.

Schedule of Don Lorenzo Gutierrez, to whom as a son and heir of his
defunct father, Don Clemente Gutierrez, of the one-half of the property,
real and personal, and debts due the estate contained in the inventory
there belongs and pertains, etc., etc.

There is adjudged to him the fifth part of the one-half of the tract of San Isidro de Pajarito	,120,0,0
The fifth part of one-half of the value of a house lot in the said tract	,001,0,0
The fifth part of the one-half of the Rancho de Navajo	,560,0,0
The fifth part of one-half of the Rancho de San Clemente	,120,0,0
The fifth part of one-half of the lands of the bosque de José Sanchez	

49

[From Archive 371.]

Hijuela de Da. Lorenzo Gutierrez, muger legitima de Dn. Franco.
Anto. Garzia, etc.

Pessos de Pta. R. G. Pessos de la Ta. R. G.
 Se la adjudica la quinta parte en la mitad del sitio de Sn. Ysidro de Pajarito. 120,0,0
 La quinta parte de la mitad del Rancho de Sn. Clemente en 120,0,0
 La quinta parte de la mitad de las tierras del bosque de José Sanchez.....

50

[From Archive 371.]

Schedule of Dona Lorenzo Gutierrez, legal wife of Don Francisco Antonio Garzia, etc., etc.

	Hard dollars R. G.	Current dollars R. G.
There is adjudged to her the fifth part of the one-half of the tract of San Isidro de Pajarito.....	120,0,0	
The fifth part of the one-half of a house lot in the side tract	001,0,0	
The fifth part of the one-half of the Rancho de Navajo.....	560,0,0	
The fifth part of the one-half of the Rancho of San Clemente.....	120,0,0	
The fifth part of the one-half of the lands of the bosque of José Sanchez.....	120,0,0	

51

[From Archive 371.]

Hijuela de Da. Maria Manuela de la Soledad Gutierrez, muger legitima de Dn. José Mariano de la Pena, etc.

	Pessos de Pta. R. G.	Pessos de la Ta. R. G.
Se le adjudica la quinta parte de la mitad del sitio de Sn. Ysidro de Pajarito	130,0,0	
La quinta parte de la mitad de vn solar en el mismo sitio en	,001,0,0	
La quinta parte de la mitad del Rancho del Navajo en	,560,0,0	
La quinta parte de la mitad del Rancho de Sn. Clemente.....	,120,0,0	
La quinta parte de la mitad de las tierras del bosque de José Sanchez	,120,0,0	

52

[From Archive 371.]

Schedule of Dona Maria Manuela de la Soledad Gutierrez, legal wife of Don Mariano de la Pena, etc., etc.

	Hard dollars R. G.	Current dollars R. G.
There is adjudged to her the fifth part of the one-half of the tract of San Isidro de Pajarito.....	120,0,0	
The fifth part of the one-half of a house lot in the said tract.....	,001,0,0	
The fifth part of the one-half of the Rancho de Navajo.....	,560,0,0	
The fifth part of the one-half of the Rancho de San Clemente.....	,120,0,0	
The fifth part of the one-half of the lands of the bosque de José Sanchez	,120,0,0	

53

[From Archive 371.]

Hijuela de Da. Maria Luisa Gutierrez, hija menor de Dn. Clemente Gutierrez, etc.

	Pessos de Pta. R. G.	Pessos de Ta. R. G.
Se le adjudica la quinta parte de la mitad del sitio de Sn. Ysidro de Pajarito	,120,0,0	
La quarta parte de la cassa morada del difunto en su correspote, abaluo	,125,0,0	
La quinta parte de la mitad de vn solar en el mismo sitio de Pajarito	,120,0,0	
La quinta parte de la mitad del Rancho de Navajo.....	,560,0,0	
La quinta parte de la mitad del Rancho de Sn. Clemente.....	,120,0,0	
La quinta parte de la mitad de las tierras del bosque de José Sanchez	,120,0,0	

[From Archive 371.]

Schedule of Dona Maria Luisa Gutierrez, minor daughter of Don Clemente Gutierrez, etc., etc.

	Hard dollars R. G. Current dollars R.G.
There is adjudged to her the fifth part of the one-half of the tract of San Isidro de Pajarito.....	120.0.0
The fourth part of the dwelling house of the defunct in its corresponding valuation.....	125.0.0
The fifth part of the one-half of a house lot in the said tract of Pajarito.....	001.0.0
The fifth part of the one-half of the Rancho de Navajo.....	560.0.0
The fifth part of the one-half of the Rancho of San Clemente.....	120.0.0
The fifth part of the one-half of the lands of the bosque de Jose Sanchez.....	*

[From Archive 371.]

Hijuela de Da. Juana Gutierrez, hija menor de Dn. Clemente Gutierrez, etc.

	Pessos de Pta. R. G. Pessos de la Ta. R. G.
Se le adjudica la quinta parte de la mitad del sitio de Sn. Ysidro de Pajarito en.....	120.0.0
La quarte parte de la casa Morada del difunto en sa corresppte. Abaluo.....	125.0.0
La quinta parte de la mitad de un solar en el mismo sitio de Pajarito.....	001.0.0
La quinta parte de la mitad del Rancho de Navajo en.....	560.0.0
La quinta parte de la mitad del Rancho de Sn. Clemente en.....	120.0.0
La quinta parte de la mitad del Rancho o bosque de Jose Sanchez.....	*

[From Archives 371.]

Schedule of Doña Juana Gutierrez, minor daughter of Don Clemente Gutierrez, etc., etc.

	Hard dollars R. G. Current dollars R. G.
There is adjudged to her the fifth part of the one-half of the tract of San Isidro de Pajarito.....	120.0.0
The fourth part of the dwelling house of the defunct in its correspnding valuation.....	125.0.0
The fifth part of the one-half of a house lot in the said tract of Pajarito.....	001.0.0
The fifth part of the one-half of the Rancho de Navajo.....	560.0.0
The fifth part of the one-half of the Rancho of San Clemente.....	120.0.0
The fifth part of the one-half of the lands of the bosque de Jose Sanchez.....	*

PLAINTIFFS' EXHIBIT D.

Equivalent to the third seal, for the year 1818.

(Signed)

FRANCISCO ORTIZ. [RUBRIC.]

In the town of San Felipe Neri de Albuquerque, on the twentieth day of the month of September, one thousand eight hundred and eighteen, before me, Don Josef Mariano de la Pena, senior judge thereof acting by appointment, with attending witnesses, in the absence of all notaries, personally appeared before me Don Francisco Xavier Chavez, resident of the town of Los Padillas, and Don Jose Lorenzo de la Pena, of the town of Pajarito, both within this jurisdiction, Pena stating that by authority and consent of his sister, Dona Mariana, and his brother Jose Rafael de la Pena, having acquired by the division between five brothers from their

grandmother and mother, Dona Maria Martina de la Soledad Gutierrez, a piece of land in the grove called Los Pinas, he gives, and in effect did give, in legal sale, now and forever, unto the said Mr. Chavez and his heirs, the aforesaid piece of land, without stating the number of varas, not being as yet divided (or) measured, but being the succession of brothers, in which division he is in the second (degree) on whichever side said premises may be measured, which premises are bounded on the north by land of the Pueblo of Isleta, on the south by lands known as those of Los Lentes, on the east by the hills, and on the west by the river del Norte, which inheritance he sold, with its entrances, exits, uses, customs, rights, and servitudes (servidumbres), free from all obligation and encumbrances whatever, in the price and sum of one hundred and fifty dollars, in sealed money of the Royal Mint, to his entire satisfaction, for which he renounces the exception of the *nan numerata* (not ready money), its proof and payment of the receipt, and the others which refer to them, at any time; that the said one hundred and fifty dollars are the legitimate value in which he sold said land, which he considers to be its just value, and not worth more, and if it should be worth more, he grants and donates the same to the purchaser unconditionally, completely, perfectly, and irrevocably, which is termed in law *intervivas* (during life and irrevocable), with the exhibition and renunciation of the laws relating to fraud and those of the royal ordinance, with all others made in the court of Aleala de Enareo; from now he abandons and (quitclaims) his brother heirs from all the right and interest held by him the said land, transferring the same to the purchaser and his heirs that he may use the same as legally his acquired by a just title, which is this conveyance; and for the security and guaranty of this sale, the conveyer bound his person and property possessed, or which he may hereafter possess, with authority and submission to the royal justices of His Majesty, to compel and press him to its fulfillment with all the rigor of the law, as by execution in the case of judgment rendered in a case tried, consented to, and not appealed; he renounced his proper residence and vicinity, the law of *cit combenerit* and the general one in law. In witness whereof he has so executed (this conveyance), signing the same with me, the said senior justice, and those in my attendance, on the aforesaid day, with the further provision that if suit is instituted against him on account of said sale, he will defend the same until Chavez is left in peaceful and quiet possession, and when can do no more, he will return the same amount, and will further pay him the improvements he may have made; to all which I certify.

(Signed) JOSE MARIANO DE LA PENA. [RUBRIC.]
*For himself and for his sister Dona Mariana
 and his brother Jose Rafael.*

(Signed) JOSE LORENZO DE LA PENA. [RUBRIC.]

Attending witness:

SANTIAGO DE LA CRUZ BERTIA. [RUBRIC.]

Attending witness:

(Signed) AMVROSIO ARMIJO. [RUBRIC.]

(Endorsed:) Surveyor-general's office, translator's department, Santa Fe, N. M., June 11, 1855. I certify the foregoing to be a translation of document D, in claim No. 3, to the Bosque de los Pinos. Davis V. Whiting, translator.

PLAINTIFF'S EXHIBIT E.

In the jurisdiction of San Augustin de la Isleta, on the 19th day of the month of October, one thousand eight hundred and twenty-one, before me, Don Manuel Ruvi, justice (alcalde) of the same, and before the secretary of the same in its corporation, personally appeared the urban captain of cavalry, Don Francisco Xavier Chavez, and Don Francisco Sarracino, representing the person of his mother, Dona Maria Luisa Gutierrez, in the name of and representing said lady, residence of this jurisdiction, the first of the town of Los Padillas and the second of Pajarito, Sarracino stating that having acquired by inheritance in the division between said brothers, as heirs of the deceased Don Clemente Gutierrez and Dona Apolonia Baca, the fifth part of the farm (rancho) of the grove known by the name of Los Pinas, within the boundaries and within its proper place, on the north side by the league of Pueblo of Isleta, on the south residents of Valencia, on the east the plain, and on the west the river Del Norte, which he gave, and in effect did give by legal sale from now and forever unto said Mr. Chavez and his heirs in the price and sum of one hundred and fifty dollars in money to his satisfaction, free from all obligation or encumbrance whatsoever, with its entrances, exits, uses, customs, rights, and servitudes (servidumbres), by which he renounces the exception of the non numerata (not ready money), its proof and payment of the receipt; that the aforesaid one hundred and fifty dollars are the legitimate value in which he sold said inheritance, which he considers to be its just value, and not worth more; and if it should be worth anything more, the remainder he grants and donates to the purchaser unconditionally, complete, perfect, and irrevocably, which is termed in law intervivos (during life and irrevocable), with the exhibition and renunciation of the laws relating to frauds, and those of royal ordinances, with all others made in the court of Alcala de Enares; and from now said lady and heir heirs abandon all right and interest they have to said inheritance, transferring the same to the purchaser and his heirs, that he may use the same as legally his, acquired by a just title, which is this conveyance; and for the security and guaranty of this sale the conveyer bound the person and property possessed by said lady, with authority and submission to the royal justices of His Majesty for its fulfillment; and as her representative, to compel and press him with all the rigor of the law, as by execution in the case of a judgment rendered in a case tried, consented to, and not appealed, he renounces his own residence and vicinity the law of *cit combererit* and the general one in law. In witness whereof he has executed this (conveyance), signing the same with me, the aforesaid justice (alcalde), and on the present paper, for the want of stamped, the party interested binding himself to attach (thereto) a sheet of the proper seal. All before the secretary. To which I certify.

(Signed)

MANUEL RUVI DE CELIS. [RUBRIC.]

By direction of madam, my mother, Dona Maria *Lu* Luisa Gutierrez,

(Signed)

FRANCISCO SARRACINO. [RUBRIC.]

(Signed)

JOSE MARIANO DE LA PINA, [RUBRIC.]

Secretary.

**SURVEYOR-GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
Santa Fe, New Mexico, July 14, 1855.**

I certify the foregoing to be a translation of Document E, in Claim No. 3, to the Bosque de los Pinoas.

DAVID V. WHITING, *Translator.*

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PLAINTIFF'S EXHIBIT F.

The citizen, Jose Antonio Chavez, constitutional justice (alcalde) of Isleta, ex political chief of this Territory, &c., &c.

In the town of San Andres de los Padillas on the 27th of December, 1839, before me, the aforesaid constitutional justice (alcalde) of Isleta, and those in my attendance, personally appeared Messrs. Don Juan Nepomoceno Gutierrez and Dona Apolonia Gutierrez, as agent for Dona Maria Alvarez del Castillo, and the first parties stated that their father, Don Lorenzo Gutierrez, had sold to Don Francisco Xavier Chavez, deceased, the portion to which they were entitled to in the grove called "de Los Pinos," as well as the portion to which Dona Lorenzo Gutierrez was entitled to; that said portions were delivered to said Don Francisco by their father aforesaid, and that the said Don Francisco remained in the quiet, peaceable possession of the property during the lifetime of their father without having any claim set up against him, and that they do not know if any document was executed in his favor, and as the said document does not appear, they give him the present certificate in order that no claim may be set up against his possession by their children, heirs, or successors, and at the request of Don Mariano Chavez they give this certificate, which they sign with me and my attending witnesses on this paper, there being none of the proper seal, on the day, month, and year aforesaid, yo which I certify.

(Signed) JOSE ANTONIO CHAVEZ. [RUBRIC.]
(Signed) JUAN

NEP'O GUTIERREZ. [RUBRIC.]

Attending:

(Signed) IGNACIO ORTIZ. [RUBRIC.]
(For my mother, Dona Palomia Gutierrez.)

Attending:

(Signed) JUAN OTERO. [RUBRIC.]
(Signed) JUAQUIN BAYAR. [RUBRIC.]

**SURVEYOR-GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
Santa Fe, N. M., June 11th, 1855.**

I certify the within to be a translation of Document K, in Claim No. 3, to the "Bosque de los Pinos."

DAVID V. WHITING, *Translator.*

60

PLAINTIFF'S EXHIBIT G.

Dn. Lorenzo Gutierrez, capitán de milicias, comandante en campaña, alcalde, de segunda elección de la Biya de Alvarquerque su juridición y frontera, &c.

Por quanto se me han presentado los yjos principales del pueblo de Sn. Agustin de la Ysleta en solicu de documento de escritura sovre las tierras que del lindero de dicho pueblo al de los Lentes de sur á norte se le vendieron á dicho pueblo por mi hantesesor Dn. Mariano de la Peña de la casa de mi manexo de Sra. mi Madre Dña. Josefa Polonia Baca de culla venta para la costancia en poder del alcalde de primera elecion desta dicha juridicion Dn. Manl. de Artega el que por hayarse de grave enfermeda no se le puede esixir el expresado documento hasta su mexoria o fallesimiento y que siendo regular lo tenga depositado en el archivo que ha su cargo esta para escusar las rrepetidas y stancias de los espresados yjos y costandome ser sierta la compra les doi el presente que firmo para resguardo firmando pa la devida costancia con dos de mi hasistencia en este de pajarito á tres dias del mes de Mayo de mil ochosientos ocho años.

LORENZO GUTIERREZ. [RÚBRICA.]

Asa.: AGUSTIN DE LA PEÑA. [RÚBRICA.]
Asa.: MANL. RUVI. [RÚBRICA.]

61

PLAINTIFF'S EXHIBIT G.

[Translation.]

Don Lorenzo Gutierrez, captain of militia, commandant in the field, alcalde of second election of the town of Alburquerque, its jurisdiction and frontier, etc., etc.

Wherreas the principal men of the pueblo of San Agustin de la Isleta have come before me asking for a deed of conveyance for the lands which, from the boundary of the said pueblo to that of Los Lentes, from south to north, were sold to the said pueblo by my predecessor, Don Mariano de la Peña, from the estate of my mother, Doña Josefa Polonia Baca, of which I am the administrator, of which sale the documentary evidence is in the possession of the alcalde of first election of this said jurisdiction, Don Manuel de Artega, from whom, he being seriously ill, it cannot be obtained until he gets better or dies, and it being probable that it is deposited in the archives under his charge, in order to avoid the repeated petitions of the said men, and knowing that the purchase was really made, I give them the present, which I sign for their security, signing it in order that it may so duly appear, with two assisting witnesses, in this place of Parjarito, on the third day of the month of May of the year one thousand eight hundred and eight.

LORENZO GUTIERRES. [RUBRIC.]

Assisting witness:

AGUSTIN DE LA PEÑA. [RUBRIC.]

Assisting witness:

MANL. RUVI. [RUBRIC.]

62

PLAINTIFF'S EXHIBIT H.

YSLETA, y Junio de 1826.

Sr. Gr. Dn. ANTO. NARVONA,

Sor., en virtud de havérseme presentado los hombres mallores y principales deste Pueblo de Sr. S. Agustin de la Ysleta, sobre qe. Dn. Anto.

José Padilla está fabricando, en un sitio de tierra qu. el Pueblo compró, á la casa de Dn. Clemente Gutierrez, como consta por un documento qe. halla en nro. poder, otorgado por Dn. Lorenzo Gutierrez, dha. venta fue echada por Dn. Mariano de la Peña; en dha. compra no hubo mas comprendidos qe. alludaron con su dinero, qe. fueron Blas Lente, Nicolas Olgín, y Pedro Lente; este dho. Anto. José Padilla no contribulló con nada, solo se funda acreedor porque para completar la cantidad del dinero qe. teníamos de entregar por dha. tierra, vendimos en la otra vanda tambien comprada á unos Señores Padilla, como consta por la escritura qe. para en nro. poder, y disen los viejos deste Pueblo qe. es siento qe. en esta compra contribulló con un tanto, Roque Lusero, abuelo de la muger de dho. Anto. José Padilla, y qe. no se le niega qe. sea acreedor á dho. sitio, pero qe. en donde le toque como comvidado, y qe. si en esta tierra desta vanda, presenta algun documento qe. diga qe. alludó con algo, tambien se le dará como se le dió á Blas Lente, á Nicolas Olgín, y á Pedro Lente, pero qe. adonde el se a puesto, qu. es casi al medio de la tierra, de ningun modo se puede, pues dha. tierra se compró para abrecaderos de nros. animales, y regularmente han bajan bacas, buelles, y cavallada á abrebar, y presisamente an de dañar, de donde vienen las riñas y cuestiones, y para evitar esto no queremos qe. se nos ponga ay, pues si se considera acreedor por haver vendido en donde el tiene ausión por parte de su muger, qe. aun quedó mucha tierra del sitio de la otra banda de donde darle lo qe. le corresponda, pues no se le niega el derecho.

En virtud de todo lo expuesto, pasamos á la fuente de la prudencia de V. S. con la venia de notro. ale. constitucional, y rendidamente suplicamos se sirva darnos el consuelo de atendernos, segun llevamos dicho, con lo que V. S. juzge ser de justicia con lo que presiviremos mersed, y juremos no ser de malisia esta ntra. petision, si lo necesario &.

MANUEL LUSERO [A. CROSS.]
Ale. de Barrio.

[Translation.]

ISLETA, June 14, 1826.

To the Governor Don ANTONIO NARBONA,

SIR: The principal men of this pueblo of San Augustine of Isleta have come before me to say that Don Antonio José Padilla is building on a tract of land which the pueblo purchased from the house of Don Clemente Gutierrez, as will appear from a document which is in our possession executed by Don Lorenzo Gutierrez, the said sale having been made by Don Mariano de la Peña, in which purchase there were included only those who aided with their money, and these were Blas Lente, Nicolas Olgín, and Pedro Lente. This said Antonio José Padilla did not contribute anything, and he bases his claim solely on the fact that in order to complete the sum of money which we had to pay for the land we sold on the other side of the river (land) also purchased from certain Messrs. Padilla, a' appears by the title paper which we hold, and the old men of the pueblo say that it is true that for this purchase a certain amount was contributed by Roque Lusero, grandfather of the wife of the said Antonio José Padilla, and it is not denied that he has an interest in the said tract,

but at such a point as it may be proper for him as one invited, and if in the tract on this side he presents any documents that will show that he assisted with anything there will also be given to him as was given to Blas Lente, to Nicolas Olgan and to Padro Lente; but where he has located, which is almost in the middle of the land, can not be allowed by any means, since the said land was purchased for watering places for our animals, and there will pass there cows, oxen, and horses, and they will certainly cause damage, whence will arise quarrels and questions, and to avoid these we do not want him to locate there, and if he thinks that he has an interest because of a sale having been made in the part where he has a share on account of the interest of his wife, there was a great deal left of the tract on the other side from which there may be given him that to which he may be entitled, as his right is not denied.

In virtue of all of that which we have set forth we apply to the fountain of the prudence of your honor with the permission of our constitutional alcalde, and we humbly pray that you will deign to give us the consolation of your attention in accordance with that which we have said, with your honor's decision as to what may be just in the matter in which we will receive grace, and we swear, etc.

MANUEL LUSERO. [A CROSS.]
Alcalde of the Ward.

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PLAINTIFF'S EXHIBIT I.

Don José Antonio Chaves Duran, the de las milicias urbanas y Alcalde Mayor del Pueblo de la Ysleta y sus partidos, &c.:

Por quanto se me han presentado los hijos principales del Pueblo de Sor. Sn. Agustin de la Ysleta en solisitud de que se les midiera su sitio del lado del sur la que lindan con Los Lentes, y pasé á dho. sitio y mandé llamar á los principales de Los Lentes, y juntos los hijos del Pueblo de la Ysleta y Los Lentes, y medié dho. sitio y entregó á los del Pueblo lo que justamente era sullo, y á Los Lentes lo mismo, y quedaron vnos y otros mui contentos y conformes con la medida que se hizo y que en nígun tiempo no pondrán alegato ni vnos ni otros por estar echo el reparto fiel y legal, y que si acaso alguno pusiere algun alegato, que no sea huido en juicio, y mandé pucieran sus mojoneras pa. perpetua memoria y firmé este documento para la devida constancia, con dos testigos de mi asistencia en este Pueblo de la Ysleta, á dos de junio de mil ochosientos beinydos años, y doy fe.

JOSÉ ANTO. CHAVS. DURAN. [RÚBRICA.]

Assaa.:

MANL. YTURRIETA. [A CROSS.]

SSaa.

PEDRO YTURVIETA. [RÚBRICA.]

65

PLAINTIFF'S EXHIBIT I.

[Translation.]

Don José Antonio Chaves Duran, Lieutenant of Urban Militia and Alcalde Mayor of the Pueblo de la Isleta and its districts, etc., etc.

Whereas the principal men of the Pueblo de San Agustin de la Isleta have come before me asking that I measure for them their tract on the

south side, which lines with Los Lentes, and I proceeded to the said tract, and I ordered the principals of Los Lentes to appear, and the men of the Puebla de la Isleta and of Los Lentes being assembled, I measured the said tract and I deliver' to those of the pueblo that which was justly theirs, and to Los Lentes the same, and both were well contented and satisfied with the measure which had been made; and they shall not at any time, neither the one nor the other, bring any suit, for the reason that the partition was made faithfully and legally, and in case anyone should bring suit let him not be heard in court; and I ordered that they set up their landmarks in perpetual evidence, and I signed this document in order that it might so duly appear, with two assisting witnesses, in this Pueblo de la Isleta, on the second of June, in the year one thousand eight hundred and twenty-two, and I certify.

F. JOSE ANTO. CHAVES DURAN. [RUBRIC.]

Assisting witness:

MANL. YTURRIETA. [A CROSS.]

Assisting witness:

PEDRO YTURVIETA. [RUBRIC.]

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PLAINTIFF'S EXHIBIT J.

[Original Title—Papers.]

Mer. del sitio de San Clemente, echo á Ana de Sandoval y Manzanares, Sor. Gor. y Capn. Gel.:

Ana de Sandoval y Manzanares, vecina de este reino de la Nueva Mexico, puesta á las plantas de Vrsa, paresco en la mas bastante forma de derecho que aylla lugar y á el mio combenga y digo, señor, que, por quanto el Marques de la Nava de Brusinos, que Dios haya en gloria, gobernador y capitán general que fué deste dho. reino, nos condujo á el año de noventa y dos para su poblason, en culla atencion, y en nombre del rey mi Señor (Dios le guez) nos prometió de dar á cada uno de los vecinos naturales deste dicho reino, que entraron á la poblason y pasificación del, de darnos los sitios que de tierras y de labores y criansas de ganados y caballadas que dejamos perdidas el año de ochenta por su inconita sublemacion, en culla virtud de habernos restituido á dicho reino, esperimentando en él innumerables trabajos, y realmente allarme pobre y viuda de Blas de la Candelaria, que Dios aya lla, y cargada de hijos, motivo digno de suplicar á Vsia. se sirba de darme, en nombre de su Magestad (Dios le gue.) un sitio de tierras titulado San Clemente, el qual hube de erencia de mi padre, que Dios aylla, Mateo de Sandoval y Manzanares, que me dexó la merced de dho. rancho con linderos que son los siguientes: Por la parte del norte las tierras de Cristobal de Tapia, y por la parte del sur, con tierras y paderes de la casa de Tome Domingues; por la parte del oriente con el río del Norte, por la del poniente el río Puerco, lo qual á Veia pido y suplico con el mas profundo rendimiento se ha de servir de mandar á la persona que mas fuere de su agrado yo de posecion real de dho. sitio, con la nueva merced del para poder yo y mis hijos, nietos, herederos y sucesores, usar de dicho sitio, y gosarlo libremente; y juro en devida forma lo nesesario, etea.

ANA DE SANDOVAL Y MANZANARES.

PRESEN'N.

En la villa de Santa Fe, en trese dias del mes de julio del año de mil setecientos y dies y seis, ante mi, el Capn. Don Phelix Martinez, que lo soy vitalicio desta real presidio de la villa de Santa Fee, govr. y capitán, genl. de este reino, y castellano de sus fuersas y precidios, por su Magd., la presento la contenida y por mi vista la hube por presentada en cuanto á lugar en dro. y atendiendo á lo justo de su pedimento y ser segun su relacion dhas.-tierras de su padre y haberlas despoblado por la sublebacion del año de ochenta.

AUTO.

Le concedo la merced que pide en nombre de su Magd. por la susodicha., sus hijos, herederos y subsesores, para que la gose y posea.

67 Entendiéndose sin perjuicio de tercero que mejor dro. tenga, y ha de poblarle dentro de seis meses por atender á la mucha ocupacion del tiempo, y mando al Cpn. Antonio Gutierrez le dé la real posesion en nombre de Su Magd., con todas las sermonias de dro., y este auto le sirva de bastante titulo; y luego que dé dha. posesion que se debuelba este original á este archivo para que se saque testimonio; y para que conste lo firmé con mi secretario de gobn. y guerra en dicho dia ut supra.

PHELIX MARTINEZ.

Ante mi,

MIGUEL THENORIO DE ALVA,
Serio. de Gorn. y Guerra.

En esta villa de San Felipe de Alburquerque, en beinte y tres dias del mes de julio de mil setecientos y dies y seis dias, io, el Capn. Antonio Gutierrez, alcalde mayor y capitán á guerra de la dicha billa y su jurisdicion, en cumplimiento del auto arriba probado por el señor gor. y capitán general Dn. Felix Martinez, fuf al dho. sitio y tierras que dho. auto me manda, y en él, dí la real posesion en nombre de su Magtd., Dios le ge., á Felix de la Candelaria, en cabesa de su madre Ana de Manzanares y Sandoval, en forma de derecho, con las sermonias acostumbradas que el derecho dispone, pasiandolo de la mano, quien arancó sacate, tiró piedras y gritó, y se la dí por los mismos linderos que señala en su peticion, como así mismo corren sus linderos: Por el oriente con el rio del Norte, por el poniente con el rio Puerco, por el sur con la casa de Tome Dominiques, por el norte con una ruina que está poco mas arriba del po. de San Clemente; i en los dichos linderos mandé poner mojoneras, habiéndolos primero reconocido; y lo firmé con dos testigos de mi asistencia, y para

que así conste lo firmé yo, dho. alcalde mayor, capitán á guerra, con

68 dos testigos de mi asistencia en dicho dia, mes y año, ut supra.

Ante mi como juez receptor.

ANTONIO GUTIERRES.

Testigo de asistencia :

ANTON. DE CHABES.

Testigo de asistencia :

BALTAZAR ROMERO.

[Translation of title papers.]

*Grant of the tract of San Clemente made to Ana de Sandoval y Manzanares.**To the governor and captain-general:*

I, Ana de Sandoval y Manzanares, a resident of this Province of New Mexico, placed at the feet of your excellency, appear in due legal form and state, sir, that when the Marquis de la Navade Brasinas, whom may God have in glory, who was governor and captain-general of the said province, brought us hither in the year ninety-two for this settlement, in the view of which, and in the name of my lord, the King, God preserve him, promise to give to each one of the native citizens of this province who might come to settle and pacify the same, the tract of land and fields is and stock raising that we abandoned in the year eighty on account of the powerful insurrection. By virtue of having been restored to said province, suffering thereby a great many hardships, and finding myself really poor and a widow of Blas de la Candelaria, deceased, and burdened with children, a good reason to supplicate your excellency that you grant me, in the name of His Majesty, whom may God preserve, a tract of land called San Clemente, which I inherited from my father, deceased, Mateo de Sandoval y Manzanares, who left me the grant of San Clemente, said rancho, with its boundaries, as follows: On the northern part with the lands of Cristobal de Tapia, and on the southern part with the lands and walls of the house of Tome Domingues, on the eastern part with the Del Norte River, on the part of the west with the Rio Puerco; which I ask of your excellency, and pray with the profoundest respect, that you may send the person whom it may be your pleasure, that the same may place me in the royal possession of said tract, together with the new grant, that I, my children, grandchildren, and heirs, and successors may use and enjoy the same; and I declare in due form whatever may be necessary.

PRESENTATION.

In the city of Santa Fe, on the 13th day of the month of July, in the year seventeen hundred and sixteen, before me, Don Phelix Martinez, captain for life of this royal garrison of the city of Santa Fe, governor and captain-general of this province and castellan of its forces and garrison for His Majesty, the petition was presented by the petitioner. I treated the same as before me in due legal form, and in view of the justness of her petition and said lands belonging to her father, according to her petition, and the same having been abandoned by him, an account of the insurrection of the year eighty.

BEQUEATH.

I concede to her the grant she asks in the name of His Majesty, to the aforesaid, her children, heirs, and successors, that she may enjoy the same; provided that it be without injury to any third party who may have a better right, and she must settle the said grant within six months,

on account of the many occupations of the time, and I hereby command Captain Antonio Gutierrez to place her in royal possession in the name of His Majesty, in all due form legal, and that this decree shall be for her a sufficient title; and as soon as said possession is given her, that this original may be returned to this office that duplicate may be made; and that it may so appear, I have signed with my secretary of government and war on said day as above.

PHELIX MARTINES.

Before me,

MIGUEL TEENORIO DE ALVA,
Secretary of Government and War.

71 In this city of San Felipe de Albuquerque, on the twenty-third day of the month of July, seventeen hundred and sixteen, I, Captain Antonio Gutierrez, chief alcalde and war captain of the said city and its jurisdiction, in compliance to the decree above named by his excellency, the governor and captain-general, Don Phelix Martines, I went to the said tract and land that in said decree I am com'anded, and there I gave royal possession, in the name of His Majesty, whom may God preserve, to Felix de la Candelaria, in the name of his mother, Ana de Manzanares y Sandoval, in legal form, with the accustomed ceremonies that the law prescribes, leading him by the hand, and he tore up grass, threw stones, and shouted, and I now give said possession with the boundaries that are designated in her petition, and therefore the same are its boundaries: On the east by the Rio del Norte, on the west by the Rio Puerco, on the south by the house of Tome Domingues, and on the north by a ruin that is a little above the pueblo of San Clemente; and in the said boundaries I ordered monuds to be made, having first examined them, and I signed it with two attending witnesses; and that it may so appear I have signed, I, the said chief and war captain, with two attendin' witnesses, on the said day, month, and year as above.

ANTONIO GUTIERRES.

Attending witness,

ANTONIO CHABES.

Attending witness,

BALTAZAR ROMERO.

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PLAINTIFF'S EXHIBIT K.

Decre' in Ana de Manzanarez case.

In the Court of Private Land Claims, sitting in the Territory of New Mexico.

J. FRANCISCO CHAVES AND SOLOMON LUNA }
vs. } No. 64.
UNITED STATES. }

This cause having hereto're come on for hearing upon the pleadings and exhibits on file, and upon proofs taken in open court, as well on behalf of defendants as on behalf of petitioners, full legal proof having been taken and counsel having been heard for said parties, and the petition

herein having been sustained by satisfactory proofs, the court, being now sufficiently advised in the premises, makes the following findings of fact:

1. That on the thirteenth day of July, in the year 1716, Ana de Sandoval y Manzanares, the widow of Blas de la Candelaria, presented to the then governor and captain-general of New Mexico, Don Phelix Martinez, her petition, praying that he grant her a piece of land called San Clemente, and setting forth the boundaries of said land as being on the north the lands of Christobal de Tapia, on the south the lands and walls of the house of Tome Dominguez, on the east the Rio del Norte, and on the west the Rio Puerco; that thereupon the said governor and captain-general made to her the grant which she asked, and com'anded the Captain Antonio Gutierres to place her in possession with all the ceremonies of law; and that on the 23rd day of July, 1716, the said Captain Antonio Gutierres, in pursuance of the com'and aforesaid of the governor, delivered possession of said land to Filix de la Candelaria as the representative of his mother, the said Ana de Sandoval y Manzanares, with the boundaries designated in her said petition, specifying the same to be, on the east the Rio del Norte, on the west the Rio Puerco,

on the south the house of Tome Dominguez, and on the north a 73 ruin, which is a little above the pueblo of San Clemente.

2. That the Rio del Norte, which constitutes the eastern boundary of said land, did not at the time of the making of said grant run in the same channel where it now does, but at some distance to the eastward of its present bed, and that the old river bed is the eastern boundary of said land, a portion or portions thereof lying east of the present river.

3. That the land included in said grant has been in the possession of said grantee, her heirs and legal representatives, continuo'sly, from the year 1716 down to the present time, and that at least one of the petitioners in this cause, Solomon Luna, has suc'e'ded in part to the rights of said original grantee, by inheritance for an ancestor, Domingo de Luna, who purchased portions of said land from heirs of the original grantee prior to the year 1750.

The court finds, as matter of law, that by reason of the facts herein-before set forth, a title to all of the land included within the boundaries aforesaid was vested in the said Ana de Sandoval y Manzanares, which title was complete and perfect at the date when the United States acquired soverei'nty over the country now embraced within the Territory of New Mexico, within which said grant is situated, and that the petitioners herein are entitled to have the same confirmed to the heirs and legal representatives of the said Ana de Sandoval y Manzanares.

The court hereby specifies that the said land is located within the county of Valencia, in the Territory of New Mexico; that it is bounded on the north by an east and west line running through the point where the public road from Los Lentes to Ysleta crosses a lateral irrigating ditch running in an easterly direction from the main ditch or Acequia

74 Madre, which lies to the west of said road, which point is about three-quarters of a mile north of the chapel or church at Los

Lentes, and a short distance above a road which branches off from said first mentioned road and runs in a westerly direction toward the hills; on the east by the old river bed of the Rio Grande del Norte; on

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the south by the northern boundary line of the Nicolas Duran de Chaves grant, as heretofore fixed by a decree of this court and as shown by the survey of said grant made in pursuance of said decree and approved by this court on the 29th day of May, A. D. 1895; and on the west by the Rio Puerco, and that the estimated area of said land is about thirty-seven thousand acres.

It is therefore ordered and adjudged and decreed by the court that the claim for the land embraced within said grant as hereinbefore described and specified be, and the same hereby is, confirmed to the heirs and legal representatives of Ana de Sandoval y Manzanares, but this confirmation does not confer any right or title to any gold, silver, or quicksilver mines or minerals of the same.

It is declared by the court that the confirmation in this decree contained in is made under Title XII of Book IV of the Recopilacion de Leyes de los Reynos de las Indias, the royal decree of the King of Spain of October 15, 1754, and the law of nations September 4, 1896.

HENRY C. SLUSS,
Associate Justice.

(Here follows map, marked p. 75.)

76 And be it further remembered that thereafter, to wit, on June 2nd, 1897, the court rendered its decision in the words and figures following, to wit:

77 In the Court of Private Land Claims, sitting at Santa Fe, New Mexico.

J. FRANCISCO CHAVEZ AND THE PUEBLO OF ISLETA, }
vs. } No. 274.
THE UNITED STATES. }

J. FRANCISCO CHAVEZ AND THE PUEBLO OF ISLETA, }
vs. } No. 275.
THE UNITED STATES. }

These two cases having heretofore come on for hearing together upon the pleadings and exhibits on file and upon the proofs taken in open court upon behalf of the petitioners, and counsel having been heard as well on behalf of defendant as on behalf of the petitioners, the court, being now sufficiently advised in the premises, finds that the petitions, and all of the material allegations of fact therein contained, have been sustained by satisfactory proofs, and the court makes the following special findings of facts:

1. On November 5, 1716, the Spanish governor of New Mexico made to Antonio Gutierrez a grant of a tract of land described as bounded on the north by an arroyo with some cottonwood trees that comes down from the hills, on the south by the Pueblo of San Clemente, and on the east the Rio del Norte, on the west the hil's of the Puerco River, which boundary calls are well-known objects, except that on the north, of the location of which there is no evidence.

2. At some time prior to the year 1734 a grant was made to Joaquin Sedillo, and he had also acquired and had in possession some additional land, the whole being bounded on the north by the line of the

league of the Pueblo of Isleta, on the south by a twin alamo⁷⁸ sometimes called the Alamo de la Culebra, which boundary on the south was identical with the northern boundary of the above-mentioned grant to Antonio Gutierrez; on the east by the Rio del Norte, and on the west by the ceja of the Rio Puerco, these boundary calls being well-known objects, except that on the south, of the location of which there is no evidence.

3. In the year 1785 one Clemente Gutierrez died in possession of, and owning, the whole of the land of the said Antonio Gutierrez and Joaquin Sedillo, which was listed in the inventory of his estate made by his widow, as "the rancho commonly called San Clemente, Barrancas, and Los Pinos."

4. At some time prior to the 3rd of May, 1808, the pueblo of Isleta had acquired the title of Clemente Gutierrez to all of the said land lying on the west side of the present river bed of the Rio Grande del Norte and had entered into possession of the same and has held such possession down to the present time, the extent of the said land so acquired by said pueblo being from the boundary of the grant of the pueblo to the boundary of the lands of Los Lentes.

5. By a number of different deeds from the children and heirs of Clemente Gutierrez, beginning in the year 1819, Francisco Xavier Chavez acquired all of the Gutierrez title to so much of the said lands as lie to the east of the present river bed of the Rio Grande del Norte, which portion of said lands is known as the Bosque de los Pinos, the northern boundary thereof being the line of the grant to the Pueblo of Isleta, and the southern boundary being the line of the lands of Los Lentes.

6. The northern boundary of the said lands of Los Lentes has been ascertained and fixed by this court in its decree of confirmation in the case of J. Francisco Chavez and Solomon Luna vs. The United States, which is numbered 64 on the docket of this court, as being the northern boundary of the land, the claim for which was confirmed in said decree.

7. After the making of the original grants the Rio Grande del Norte formed a new channel west of what was subsequently known as the Bosque de los Pinos, leaving its former river bed at a considerable distance east of the new one, and that portion of the land in question lying between the old and new river beds has since been known as the Bosque de los Pinos and it is that which was acquired by Francisco Xavier Chavez.

8. The petitioner, J. Francisco Chavez, is a grandson of the said Francisco Xavier Chavez and has inherited his title to the Bosque de los Pinos, which has been continuously in the possession of the said Francisco Xavier Chavez and his descendants since his purchase.

9. Clemente Gutierrez, and those deriving title under him, have been in the possession of the said land from some time prior to the distribution of his estate in 1875 down to the present time, at all times exercising dominion over it.

The court therefore finds, as matter of law, that the title held by Francisco Xavier Chavez and his descendants to that portion of the said lands lying between the old and present river beds of the Rio Grande del Norte, commonly known as the Bosque de los Pinos, and the title

held by the Pueblo of Isleta to that portion of the said lands lying west of the present river bed of the Rio Grande del Norte, were complete and perfect titles at the date when the United States acquired sovereignty over the country now embraced within the territory of New Mexico and within which said lands are situate; and that the said J. Francisco Chavez and the pueblo of Isleta are entitled to a decree of confirmation of their respective claims; and that, under the special circumstances of the case, but one decree of confirmation ought to 80 be entered for the whole of the land lying between the grant to the pueblo of Isleta and the northern line of the grant to Ana de Sandoval y Manzanares, and that the said two cases are to be taken and considered as consolidated for the purpose of such confirmation and decree.

And it is declared by the court that the confirmation in this decree contained is made under Title XII of Book IV of the *the Recopilacion de Leyes de los Reynos de las Indias*, the Spanish law of prescription, and the law of nations.

It is therefore ordered, adjudged, and decreed by the court that the claim for so much of the said land as lies between the old and present river beds of the Rio Grande del Norte, commonly known as the Bosque de los Pinos, be, and the same hereby is, confirmed to the said J. Francisco Chavez; and that so much of the said land as lies to the west of the present river bed of the Rio Grande del Norte be, and the same hereby is, confirmed to the said pueblo of Isleta; but this confirmation does not confer any right or title to any gold, silver, quicksilver mines or minerals of the same.

The court declares and specifies that the said land, the claims for which are hereby confirmed, is situated in the county of Valencia, in the Territory of New Mexico, and is bounded on the north by the southern line of the pueblo grant to the pueblo of Isleta, as surveyed under the confirmation of the same by the Congress of the United States; on the east by the old river bed of the Rio Grande del Norte; on the south by the north line of the grant to Ana de Sandoval y Manzanares as established by the decree of this court in the case of J. Francisco Chavez and Solomon Luna vs. United States, numbered 64 on the docket of this court; and on the west by the *ejia* (being the divide between the Rio Puerco and the Rio del Norte) of the Rio Puerco; and that the area of the said land is estimated to be between thirty and thirty-five thousand acres.

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In the Court of Private Land Claims.

J. FRANCISCO CHAVES }
 vs. } 274.
 THE UNITED STATES. }

OPINION.

The questions presented for consideration in this case are, first, as to the boundaries of the land granted; and, second, whether the plaintiff, J. Francisco Chaves, or his copetitioner, the pueblo of Isleta, is so connected with the title as to authorize this proceeding. The facts are as follows: On November 5, 1716, the Spanish governor of New Mexico

made to Captain Antonio Gutierrez a grant of a tract of land described as bounded "on the north by an arroyo with some cottonwood trees that comes down from the hills; on the south by the pueblo of San Clemente; on the east, the Rio del Norte; on the west, the hills of the Puerto River." All these boundary calls are well-known objects except that on the north, and of the location of the latter there is no evidence. In 1785, Clemente Gutierrez having died, in a proceeding to partition his estate, an inventory of his estate was made by his widow, who gave her name as Maria Apolonia Baca, and among other tracts of land listed was one described as "the rancho, commonly called San Clemente, Barrancas, and Los Pinos." San Clemente was a well known abandoned Indian pueblo. Barrancas was a well-known bluff on the Rio Grande River, which formed the south boundary of the pueblo grant to the Indians of the pueblo of Isleta. Los Pinos was a well-known grove of pines along the Rio Grande River, between the other named points. In the partition proceeding referred to this tract of land was distributed in individual parts among the widow and children of Clemente Gutierrez. On May 3rd, 1808, Lorenzo Gutierrez delivered to the pueblo of Isleta a statement to the effect that he was the administrator of the estate of his mother, Josefa Polonia Baca, and that his predecessor, Mariano de la Pena, had conveyed to the Indians of the pueblo of Isleta the lands of his mother from the boundary of the pueblo to that of Los Lentes, and that the deed was in the possession of the alcalde of the first district of Albuquerque.

82 Lorenzo Gutierrez was the son of Clemente Gutierrez, and Mariano de la Pena was the husband of the daughter of Clemente Gutierrez. The Los Lentes were a settlement having a tract of land the north boundary of which was a short distance north of the abandoned San Clemente pueblo. After the making the grant to Antonio Gutierrez the Rio Grande formed a new channel west of the grove of pines for the entire distance from the Barrancas to San Clemente, and the tract lying between the old and new channels became known as Bosque de los Pinos.

In the years 1819 and 1821 by different deeds a number of the children and heirs of Clemente Gutierrez conveyed the Bosque de los Pinos to Francisco Xavier Chaves, giving the line of the pueblo grant as the north boundary, and the line of Los Lentes as the south boundary. The plaintiff J. Francisco Chaves is a descendant and inherits from Francisco Xavier Chaves. In the year 1822 the alcalde of the district, in a proceeding for that purpose, established the boundary line between the tract in question as the lands of the pueblo of Isleta, and the lands of Los Lentes. In 1826 the pueblo of Isleta made complaint to the governor of the Territory against a man who had made an unauthorized settlement in the tract in which they asserted their ownership, and that they had purchased the tract from "the house of Gutierrez." The Bosque de los Pinos has been in the possession of Francisco Xavier Chaves and his descendants since his purchase, and the pueblo of Isleta has been in possession of the remainder of the tract for a time beyond the memory of man. From these circumstances we think it is a fair inference that Clemente Gutierrez was the descendant and heir of Antonio Gutierrez. There is no reason to say that he was not. It is more probable that he inherited the title from Antonio Gutierrez than that he was a stranger to

the title. Clemente Gutierrez and those deriving title under him were in possession of the land from a time years prior to the distribution of the estate in 1785, and have continued in that possession from that time to the present, at all times exercising dominion over it, claiming ownership under the inheritance from Clemente Gutierrez. Under Spanish and Mexican law, as we think, this was sufficient to establish ownership. By law 1, book 4, title 15, of the Recopilacion, it was
83 provided that a title by prescription could be acquired, as against the Crown, of cities, towns, and villages, &c., by a possession of forty years. (See *New Orleans vs. United States*, 10 Peters, 724.) The Recopilacion and the Partidas were the fundamental laws of Spain (10 Peters, 724). By laws 9, 14, and 15, title 29, partida 3, it was provided that an inheritance was such a "just title" as was requisite to become the basis of title by prescription. By law 14, title 12, book 4, of the Recopilacion (2 White, 52) the right to acquire title by prescription against the Crown was recognized as applicable to public lands. The provisions and principles of this law were recognized and continued in force as to public lands by the 2nd article of the royal cedula of 1754. The fundamental principles of Spanish law as found in the Recopilacion and in the Partidas were not set aside by the independence of Mexico, but continued to be regarded and respected as the law of that country after independence. From a book entitled *Collection of the Laws and Decrees of the Cortes of Spain*, reputed to be in force in the Republic of the United States of Mexico (Mexico, 1829, press of Galvan), we quote:

"The independence of Mexico being fortunately realized by the occupation of its capital on the 27th of September, 1821, and the destruction of the viceroyal government, although the bonds of dependence with Spain were broken forever, the laws that regulated the duties and rights of those who composed this new society could not and ought not remain without force, for, not being possible to renew them except after the lapse of time and by competent authorities, the sudden abolishment of all of them would be the same as the establishment of absolute anarchy when order was most needed. Thus it is that, with exception of those laws that conflict directly with the memorable plan of Iguala and the new order of things it created, all others that have emanated from the King of Spain and from the sovereign authority recognized until that day, were observed and respected, lawsuits were decided by them, justice was administered under them, and Mexicans adjusted their social life to their tenor. From this it resulted that the Spanish codes, which
84 it has not yet been possible to substitute by other new ones, are eagerly sought for by the judges, professors, and even by plain citizens, in as much as they find in them the guide for their actions, the guarantee of their reciprocal rights, and the rule for their procedure."

We think, therefore, that forty years' possession proceeding upon a title by inheritance is sufficient evidence of a perfect title to the whole tract so possessed as against both Spain and Mexico, and sufficient to show a connection of such possession with the original grant.

In the recent case of *United States vs. Chaves*, 159 U. S., 451, it is said: "We do not wish to be understood as undervaluing the fact of a possession so long and uninterrupted as disclosed in this case. Without

going at length into the subject, it may be safely said that by the weight of authority, as well as by preponderance of opinion, it is the general rule of American law that a grant will be presumed upon proof of an adverse and uninterrupted possession for twenty years, and that such rule will be applied as *presumptio juris et de jure* wherever by possibility a right may be acquired in any manner known to the law. 1 Greenleaf Ev., 12th ed., sec. 17; Richard vs. Williams, 7 Wheat., 59, 109; Coolidge vs. Learned, 8 Pick., 503. Nothing, it is true, can be claimed by prescription which owes its origin to, and can only be had by, matter of record; but lapse of time accompanied by acts done, or other circumstances, may warrant the jury in presuming a grant or title by record. Thus, also, though lapse of time does not of itself furnish a conclusive *hac* to the title of the sovereign, agreeably to the maxim *nullum tempus occurrit regi*; yet if the adverse claim could have had a legal commencement juries are advised or instructed to presume such commencement, after many years of uninterrupted possession or enjoyment. Accordingly, royal grants have been thus found by the jury after an indefinitely long continued peaceful enjoyment, accompanied by the usual acts of ownership. 1 Greenl. Ev., sec. 45. The principle on which this doctrine rests is one of general jurisprudence, and is recognized in the Roman law and the codes founded thereon, Best's Principles of Evidence, sec. 366, and was *thereofre* a feature of the Mexican law at the time of the cession."

85 We are justified in supposing that this language was intended for our guidance, and we think it is aptly applicable to the facts of this case.

On the whole case, we think the evidence is sufficient to show a title such as is entitled to be confirmed as a perfect title.

There will be a confirmation of the tract known as Bosque de los Pinos to J. Francisco Chaves, and the tract claimed by the Pueblo of Isleta will be confirmed to the Pueblo of Isleta.

The decree should definitely describe the boundaries of each tract, the north boundary being at the south line of the Pueblo grant to the Pueblo of Isleta as surveyed under the confirmation of the same by Congress.

(Signed)

HENRY C. SLUSS,
Associate Justice.

(Endorsed:) Case No. 274. J. Francisco Chaves vs. United States. Opinion of the court. Filed in the office of the clerk of the Court of Private Land Claims June 2d, 1897. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

In the Court of Private Land Claims.

J. FRANCISCO CHAVES AND THE
Pueblo of Isleta
vs.
UNITED STATES. } No. 274. Bosque de los Pinos.

The claims in this case were filed under the provision of section 8 of the act of March 3rd, 1891, which provides for the confirmation of titles

to land derived from the Spanish or Mexican Governments that was complete and perfect at the date when the United States acquired sovereignty therein, etc.

The grant which is the basis of the claim was made by the Spanish Government on the 5th day of November, 1716, to one Antonio Gutierrez. The grant is genuine, but was not confirmed as required by article 5 of the royal instruction of October 15, 1754.

Hall's Mexican Law, page 28.

It is claimed by counsel for petitioners:

"That the land originally granted to Antonio Gutierrez was transferred by him to Diego Padilla, and that Diego Padilla conveyed to Diego Borgeo, who conveyed the same to Nicolas de Chaves, these conveyances being made in the years 1734 and 1736. It also appears from archive 371 in the surveyor-general's office that some time prior to the year 1785 the land claimed had become the property of one Clemente Gutierrez. The petitioners claim under deeds from the heirs of Clemente Gutierrez. It does not appear how Clemente Gutierrez acquired possession or title to the land, nor does it appear that he was in any way related to the original grantee or to Nicolas de Chaves. The petitioners claim under the grant to Antonio Gutierrez, but introduced on the trial deeds from the heirs of Clemente Gutierrez. It was admitted by counsel at the trial that he had failed to connect the claimants with Antonio Gutierrez by record or parol evidence. The claim must therefore stand alone on deeds introduced on the trial (not mentioned in the petition) from the heirs of Clemente Gutierrez. The court is asked to presume that Clemente Gutierrez was an heir of Antonio Gutierrez and to connect the petitioners with the grantee by a regular chain of title. It must further presume that Clemente Gutierrez had in some way acquired the title from Nicolas de Chaves. But if these difficulties were out of the way this is

87 not such a claim as the court is authorized to confirm by the provisions of the 8th section of the act of March 3rd, 1891. It is not pretended that the grant was ever confirmed as required by the royal instructions of 1754. The grant is therefore incomplete and imperfect and is barred by the statute of limitations, not having been filed until 1896. If the court shall be governed by the admission of petitioner's counsel, that he had failed by evidence to connect the petitioners with the grantee, this court has no jurisdiction to adjudicate the claim. A claim based on deeds from private parties unconnected with a grant or some other form of title made by an officer of the Spanish or Mexican Government authorized by law to make it is not a claim upon a title lawfully and regularly derived from the Government of Spain or Mexico. See section 13, act of March 3rd, 1891, Reynolds' Compilation, page 14.

A majority of my brethren are of the opinion that forty years' possession and occupation of the land perfected the title by prescription, and being so perfected according to the laws of Spain and Mexico, it is such a claim as this court is authorized to confirm. This brings me to an examination of the law of prescription. 'In the first place, the maxim, "Nullum tempus occurrit regi," applies to the Crown of Spain and the Republic of Mexico. The vacant public lands belonged to the Crown. The King is the source of all law. So, if the position assumed by the court is correct, the right to prescribe against the King must be found in

some law, order, or decree to which he has given his assent. The law of prescription is as old as the civil law. Justinian fixes the time in which possessory title to immovable things may be acquired at 26 years, but such title would not enable the party to sustain an action for the recovery of the property if possession was lost. There is some apparent confusion in the laws in force in Spain on the question of prescription, but an examination of the character of things prescribed by the two kinds of prescription, "immemorial and temporal," the difficulty is removed. Immemorial and temporal prescription is discussed together, when, in the very nature of the things prescribed and the manner of proving rights by prescription, they should be treated separate. I can

88 better illustrate by reference to 1st White's Recompilation, pages 91, 92, and 93. It is there said: "Prescription is to hold the property or thing of another for a certain time, and to make it thereby one's own, so that the right owner cannot afterwards deprive you of it. To constitute prescription, good faith (*buenas fe*), just title, and a capacity of the thing for the purpose, and of the person who prescribes, are necessary; as also continued or uninterrupted possession for a determinate time." "Just title consists in the cause or consideration by which possession of the thing is obtained, being one of those by reason of which dominion is acquir'd—as purchase, gift, inheritance, etc."

This definition is too general to be applied to immemorial prescription, or to temporal prescription when possession is acquired without just title. "Temporal prescription is confined or limited to a certain number of years. To this sort belong, 1st, the limitation of a year in which the claim to the penalty incurred by judicial bail for not producing the person bailed is prescribed. The prescription of three years in which personal property is acquired, * * *. The prescription of ten years, in which real property (*las raices*) is acquired among persons present, * * *. That of 20 years, which prescribes the right of absent persons to real property * * *. That of 30 years, in which property generally is acquired, even without good faith * * *. 1 White's Recompilation, pages 95, 96.

Thirty years' possession of land without good faith, and, I will add, on just title, will enable the possessor to hold by prescription against a private party.

The rule of law requiring good faith and just title to enable a possessor of land to avail himself of prescription is necessarily confined to cases of purchase, gift, or inheritance, and therefore cannot be applied to immemorial prescription, nor to cases where parties acquire possession of land without title. Immemorial prescription proceeds upon the idea that the possessor never had title, or from lapse of time (forty years) is unable to produce it. Possession, therefore, must be proven "by witnesses of good fame or character, who depose to having seen the person in possession of the thing or property for 40 years, and 89 having heard their ancestors say that they never heard anything to the contrary." 1 White's, page 95.

As before stated, this kind of prescription has no application to cases where parties are in possession of land claiming under any sort of title, either from the Government or deeds from private parties, but is expressly confined "to the seign'ory or dominion of cities, towns, and

civil and criminal jurisdictions, but not to that which kings possess by their preminence and prerogatives, nor taxes, nor tributes." *Id.*, 95.

The royal instruction of October 15, 1754, with slight modifications, was in force in Spain at the date of Mexican independence. It will be found in Reynolds' Compilation, pages 50, 51, 52, 53, 54, 55, 56, and 57. This law provided a complete system for the settlement of titles to land in the Kingdom which had been issued prior and subsequent to the year 1700. Parties long in possession of land without title prior to the year 1700 were allowed to prove such long possession as just title by preser'ition "with the understanding that if said royal lands are not cultivated or famed they give them the term of three months provided by law 11 of said book and title, or that which appears best for them to do, so with notice that on the contrary they will be granted to whoever denounces them with the same obligation to cultivate them." This was an act of grace and favor by the Crown to persons long in possession without title. It is not a recognition by the King that title had been acquired by long possession, but, on the contrary, they were permitted to acquire title on the conditions that within the time prescribed the land should be cultivated as prescribed by law, otherwise it was to be granted to others on the same condition, to cultivate it. It will be noticed that all persons claiming land by title of any kind issued by the King's officers, without reference to the length of time they had been in possession, were required to submit their titles to the proper officers and have the fact of such presentation noted on the title papers.

No one going into possession without title subsequent to the year 1700 were allowed the privilege given to those long in possession prior to the year 1700, though parties might have been in possession more than forty years prior to the year 1700 to the date of the royal instructions. On the contrary, land so held "shall be adjudged to the royal patrimony, although they are farmed, planted, or have factories" if the trespassing holders failed to comply with the requirements of article 7 of said instructions.

Parties in possession under grants made subsequent to the year 1700 which had not been confirmed by the King were required by article 5 of said instructions "to apply for the confirmation thereof to the audiences in their district, and to other officers to whom the power is given by these new instructions." It was the duty of said officers to examine as to whether the sale or composition was made without fraud or collusion, etc., and if it appears that the price of sale and composition, taxes, etc., had been paid, said officers were to issue to them, in the King's name, confirmation of their titles.

I have been unable to find any law of Spain which supports the doctrine that title by prescription could be acquired against the Crown. Neither have I found a single instance where the holde's of imperfect titles have been permitted to plead any lapse of time as an excuse for their failure to comply with the requirements of law in relation to the confirmation of their titles.

Mr. Oroso, in his excellent work on Legislation and Jurisprudence on Public Land, published in 1895, discusses at great length the royal instructions of 1754, from which I copy the following extracts: "In the absence of a suit or legitimate interest of a third party, we have already

seen that the possessor has a right to demand from the Government a revalidation of his title, and in that case it is idle to inquire if a document of that character may operate or not as a just title upon which to build the right of prescription. If the defective title is produced in a suit with a third party who denounces a tract as vacant, we believe that such a title will not be sufficient as a basis for the right of prescription. The title given by a special judge would not convey the dominion in the land sold or granted to a private individual or to a corporation capable of acquiring until the said title received the royal confirmation,

91 hence the possessor of a tract the title to which lacks confirmation or annotation, never in reality acquired title by purchase or grant to the land possessed by him, and in the absence of the 'just title' by dominion, the prescription to acquire the land could not begin to run in his favor," as the requirements of confirmation was prescribed by law; ignorance of its being necessary cannot be alleged, for in no case will ignorance of the laws of the country excuse any one."

"Unconfirmed titles issued from the year 1700 on are only valid by the new payments which the interested parties may make into the public treasury in accordance with what may be provided in this regard by the royal audiences and by the solemn requirements of confirmation which the said audiences shall issue in the name of the sovereign. This is different from what happens with titles issued prior to 1700, which do not require confirmation, and with regard to which it is not necessary to make new payments for their complete validity agreeably with what we have said at the proper place."

"The provision provides that there shall be made a new payment to be fixed by the prudent discretion of the royal audiences as a condition to the issuance of confirmation for a title that is devoid if made subsequent to the year 1699 has not been repealed. Therefore, if a holder of a title of that kind has recourse at the present day to the president of the republic, asking that the defects in his title be corrected, he will certainly be obliged to pay into the national treasury such sum of money as the executive equitably and prudently may fix, and the executive can not wholly dispense with this payment, only when he is expressly given the authority to dispense with taxes and other property of the public treasury."

"Titles lacking confirmation is certainly insufficient to justify the dominion of a tract of land as against the nation, for the requisites of confirmation is material and has been dispensed with only in the case of titles prior to 1700, on condition that they were to be presented before the subdelegates or royal commissioner and duly annotated by them."

92 Without pursuing this further, it is quite clear to me that the grant in this case is incomplete and imperfect and not in any way affected by prescription. Tested by the laws of Spain and Mexico, to which we are limited by the act creating the court, on all the grounds herein set out, the claim should be rejected and the petition dismissed.

(Signed)

Wm. W. MURRAY,
Associate Justice.

(Endorsed:) Case No. 274. J. Francisco Chavez *vs.* United States. Filed in the office of the clerk of the Court of Private Land Claims June 2d, 1897. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

UNITED STATES OF AMERICA, *ss:*

Court of Private Land Claims, Santa Fe district.

J. FRANCISCO CHAVES AND PUEBLO OF ISLETA, plaintiffs and appellee,
vs.
 THE UNITED STATES, DEFENDANT AND APPELLANT. } No. 274. Antonio Gutierrez
 grant.

The above-named defendant, the United States, considering itself aggrieved by the decree entered on the 2nd day of June, 1897, in the above-entitled proceeding, doth hereby appeal from said decree to the Supreme Court of the United States, and it prays that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

MATT. G. REYNOLDS,
U. S. Attorney for Defendant and Appellant.

It is ordered that an appeal be, and hereby is, allowed as prayed for.
 This Oct. 11, 1897.

JOSEPH R. REED, *Chief Justice.*

94 *Citation on appeal to Supreme Court.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to J. Francisco Chavez and Pueblo of Isleta, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the Court of Private Land Claims, wherein the United States is appellant and you are appellees, being cause No. 275 on the dockets of said Court of Private Land Claims, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this eleventh day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

WILBUR F. STONE,
Associate Justice, Court of Private Land Claims.

We hereby acknowledge service of the foregoing citation for and on behalf of the plaintiffs and appellees this sixteenth day of October, 1897.

F. W. CLANCY,
Attorney for J. Francisco Chavez.

G. L. SOLIGNAC,
Attorney for Pueblo of Isleta.

95 UNITED STATES OF AMERICA,
Territory of New Mexico:

I, James H. Reeder, clerk of the Court of Private Land Claims, do hereby certify that the foregoing 94 pages contain a full, true, and perfect transcript of all record entries and proceedings, and of all the files and papers in the cause lately pending in said court in which J. Francisco Chavez and the Pueblo of Isleta were plaintiffs and the United States were defendants, No. 274, as the same appear of record and on file in my office.

Witness my hand and the seal of said court at my office at Santa Fe, New Mexico, this 1st day of December, A. D. 1897.

[SEAL.]

JAMES H. REEDER, *Clerk,*
Per IRENEO L. CHAVES, *Deputy.*

(Indorsement on cover:) Case No. 16742. Court of Private Land Claims, term No. 207. The United States, appellant, vs. J. Francisco Chavez and Pueblo of Isleta. Filed December 9, 1897. Office Supreme Court of U. S. Received Dec. 9, 1897.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 208.

THE UNITED STATES, APPELLANT,

VS.

J. FRANCISCO CHAVEZ AND PUEBLO OF ISLETA.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 UNITED STATES OF AMERICA,

Territory of New Mexico, ss:

Be it remembered that heretofore, to wit, on the 9th day of September, 1896, there was filed in the office of the clerk of the Court of Private Land Claims, at the city of Santa Fe, in the Territory of New Mexico, a petition; which said petition is in the words and figures following, to wit:

2 THE UNITED STATES OF AMERICA.

In the Court of Private Land Claims, sitting at Santa Fe, New Mexico.

J. FRANCISCO CHAVEZ }
vs. }
THE UNITED STATES. }

To the honorable chief justice and associate justices of said court:

Your petitioner, J. Francisco Chavez, resident of the county of Valencia, in the Territory of New Mexico, brings this, his petition, against the United States, and thereupon shows to the court the following:

1. At some time in the early part of the eighteenth century a grant of land was made by the proper authorities of the Government of Spain to one Joaquin Sedillo, which land lies immediately south of the lands of the Indian pueblo of Isleta and was bounded on the north by the line of the league of said pueblo, on the east by the Rio Grande, on the south by a twin alamo, called by some the alamo de la culebra, and on the west by the ceja of the Rio Puerco; but the original grant papers evidencing the said grant have been lost or destroyed and can not now be produced. The fact of the existence of the said grant is, however, shown by papers which constitute a portion of archive 178 in the office of the surveyor-general for New Mexico, copies and translations whereof are filed herewith in duplicate.

2. From the time of the making of said grant, the said Joaquin Sedillo and his lawful successors in title have been in continuous, peaceable, and uninterrupted possession of the land embraced within the grant down to the present time.

3. To the best of the knowledge, information, and belief of this petitioner there are no persons in possession of or claiming said tract of land, or any part thereof, adversely to the claim of this petitioner.

4. The said land is situate in the county of Valencia, in the Territory of New Mexico, and the boundaries thereof are as hereinbefore set forth; but it is expressly averred that the eastern boundary refers to the old river bed of the Rio Grande, which is about two miles further east than the present bed of that river. It is impossible to state, even approximately, the quantity of land embraced in said grant, as no survey thereof has ever been made, but it is estimated to be between ten thousand and fifteen thousand acres, a map thereof showing the same as near as may be being filed herewith. The southern boundary hereinbefore mentioned has, as petitioner is informed and believes, been completely destroyed and its location can not now be identified with certainty, and it is probable that no tradition of its location now exists for the reason that the said tract of land and the one immediately south thereof had become united in

ownership in the hands of one person as early as the year 1734, as will fully appear by reference to the said archive 178 hereinbefore mentioned.

5. No claim for the said grant has heretofore been confirmed, considered, or acted upon by Congress or the authorities of the United States, or been heretofore submitted to authorities constituted by law for the adjustment of land titles within the limits of New Mexico.

6. This petitioner avers that the title to said grant was complete and perfect at the date when the United States acquired sovereignty in New Mexico, and that this petitioner has succeeded in part to the rights of the original grantee, the said Joaquin Sedillo.

4 Your petitioner therefore prays that the validity of the said title may be inquired into and decided by this honorable court, and that the same may be confirmed to the heirs and legal representatives of the said Joaquin Sedillo.

J. FRANCISCO CHAVEZ,
Petitioner,
By F. W. CLANCY,
His Solicitor.

5 And be it further remembered that thereafter, to wit, on the 11th day of November, A. D. 1896, an abstract of title was filed in the office of the clerk; which said abstract of title is in the words and figures following, to wit:

6 In the Court of Private Land Claims, sitting in the Territory of New Mexico.

J. FRANCISCO CHAVEZ }
v.s.
UNITED STATES. }

Abstract of title.

The claimant is unable to present any direct conveyance from the original grantee or from his heirs with which he is in any way connected, but he relies upon archive No. 178, in the office of the surveyor-general for New Mexico, to show that the heirs of Joaquin Sedillo in the year 1734 sold and conveyed the said tract of land to Diego Borrego, and that the latter in the year 1736 conveyed the said land to Nicolas de Chavez. Copies and translations in triplicate of said archive No. 178 have been filed with the petition herein.

The claimant relies upon archive No. 371, in the office of the surveyor-general for New Mexico, to show that at some time prior to the year 1785 the said land had become the property of Clemente Gutierrez. The said archive No. 371 is a record of proceedings as to the estate of said Clemente Gutierrez, and claimant files herewith copies and translations in triplicate of so much thereof as shows the inventory of all the real estate belonging to said Clemente Gutierrez and the hijuela given to each of the heirs showing their respective shares of said real estate.

Claimant relies upon the following-described deeds to connect him with

the title of said Clemente Gutierrez, and through him with the original title to the grant :

7 Deed of Jose Lorenzo de la Pena, for himself and his sister Mariana and his brother Jose Rafael de la Pena, to Francisco Xavier Chavez, dated September 20th, 1818, for an undivided fifth of the Bosque de los Pinos, bounded on the north by the lands the pueblo of Isleta, on the south by the lands known as those of Los Lentes, on the east by the hills, and on the west by the Rio del Norte, a translation of which deed, made in the year 1855 by the official translator of the office of the surveyor-general for New Mexico, is now on file in this court in case No. 64, and triplicate copies thereof are filed herewith.

Deed from Francisco Sarracino, representing his mother, Maria Luisa Gutierrez, one of the children of Clemente Gutierrez, to Francisco Xavier Chavez, for an undivided interest in the ranch of the Bosque de los Pinos, bounded on the north by the league of the pueblo of Isleta, on the south by residents of Valencia, on the east the plain, and on the west the Rio del Norte, dated October 19, 1821, a translation of which deed, made in the year 1855 by the official translator of the office of the surveyor-general for New Mexico, is now on file in this court in case No. 64, and triplicate copies thereof are filed herewith.

A deed from Juan Nepomuceno Gutierrez and Apolonia Gutierrez to validate the sale made by their father, Lorenzo Gutierrez, of the portion to which he and Lorenza Gutierrez were entitled in the Bosque de los Pinos, dated December 27th, 1839, a translation of which deed, made by the official translator of the office of the surveyor-general of New Mexico in the year 1855, is now on file in this court in case No. 64, and triplicate copies thereof are filed herewith.

Claimant avers that the originals of the three deed' above described were filed in the office of the surveyor-general in 1855, and that they appear to have been withdrawn from that office by J. Bonifacio Chavez on the day of , 187 , and can not now be found, although the official translations made at that time have been preserved.

The said Francisco Xavier Chavez, to whom the said deeds were made, was the grandfather of this claimant, and claimant has inherited from his said grandfather an interest in the property conveyed by said deeds.

8 And be it further remembered that thereafter, to wit, on the 27th day of October, A. D. 1896, an answer was filed in the office of the clerk; which said answer is in the words and figures following, to wit :

9 In the Court of Private Land Claims, Santa Fe district, 1896.

J. FRANCISCO CHAVEZ }
vs. } No. 275.
UNITED STATES. }

Answer.

Now comes the United States, by its attorney, Matt. G. Reynolds, and for answer to the petition in the above-entitled cause, says: 'That it has

not sufficient information upon which to base a belief as to whether or not it is true, as alleged in said petition, that in the early part of the eighteenth century a grant of land was made by the proper authorities of the Government of Spain to one Joaquin Sedillo of the tract of land described in claimant's petition; defendant accordingly denies the truth of said allegation and demands strict proof thereof.

Defendant further answering denies that the said Joaquin Sedillo and his lawful successors in title have been in the continuous, peaceable, and uninterrupted possession of the land described in said petition down to the present time, and further denies that if there was a grant made as alleged by plaintiff, the boundaries thereof were as stated in plaintiff's petition.

Defendant admits that no claim for said grant has heretofore been confirmed, considered, or acted upon by Congress, or the authorities of the United States, or been heretofore submitted to the authorities constituted by law for the adjustment of land titles within the limits of New Mexico.

Defendant, further answering, denies that the title to said grant was complete and perfect at the date when the United States acquired sovereignty over the Territory of New Mexico, and further denies that the petitioner has succeeded in part to the rights of the said Joaquin Sedillo, or that he holds under the said Joaquin Sedillo, or has ever claimed that he so holds.

As to the other allegations of claimant's petition, defendant shows that he has not sufficient knowledge upon which to base an opinion as to the truth or falsity thereof, and accordingly denies the truth of said 10 allegations and each of them, and prays that plaintiff be put to strict proof of the truth thereof.

Now, having fully answered, defendant prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition, and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

Respectfully submitted.

MATT. G. REYNOLDS,
U. S. Attorney.

11 And be it further remembered that thereafter, to wit, on the 13th day of November, 1896, the petition of the pueblo of Isleta to be made copetitioners was filed in the office of the clerk; which said petition is in the words and figures following, to wit:

12 THE UNITED STATES OF AMERICA.

In the Court of Private Land Claims, sitting at Santa Fe, New Mexico.

J. FRANCISCO CHAVEZ }
vs. }
UNITED STATES. }

To the honorable chief justice and associate justices of said court:

Your petitioner, the pueblo of Isleta, a body corporate situated in the county of Valencia, Territory of New Mexico, respectfully prays to be allowed to offer in this cause, as a copetitioner with the said J. Francisco Chavez, and adopts as its own, all of the allegations of the petition of said J. Francisco Chavez heretofore filed herein, with the same effect

as though they were here at length represented and in terms made applicable to this petitioner, the same as in said petition they are applicable to said J. Francisco Chavez, consenting and agreeing that the answer filed on behalf of the respondents may be taken and considered as our answer to the claim of this petitioner, the same as though it had appeared originally as a copetitioner with said Chavez; and join in the prayer of the petition of said Chavez that the validity of the title therein set off may be inquired into and decided by this honorable court, and that the same may be confirmed to the heirs and legal representatives of Joaquin Sedillo.

G. L. SOLIGNAC,
Attorney for the Corporation of the Pueblo of Isleta.

13 And be it further remembered that on the 13th day of Nov., A. D. 1897, the same being a day of the regular Nov. term, 1897, holden at the city of Santa Fe, Territory of New Mexico, the following among other proceedings were had, to wit:

J. FRANCISCO CHAVEZ }
vs. } No. 275. Joaquin Sedillo grant.
THE UNITED STATES. }

This cause coming on to be heard upon the petition of the pueblo of Isleta on file in this cause, and being submitted by counsel, G. L. Solignac appearing for said petitioner and W. H. Pope, esq., assistant United States attorney, appearing for defendants, the court being sufficiently advised in the premises, grants the prayer of said petition.

It is therefore ordered by the court that said pueblo of Isleta be, and it is hereby, permitted to come into this cause as a copetitioner with said J. Francisco Chavez.

14 And be it further remembered that on the 5th day of May, 1897, the same being a day of the regular May term, 1897, of said court, the following among other proceedings were had, to wit:

J. FRANCISCO CHAVEZ }
vs. } No. 275. Joaquin Sedillo grant.
THE UNITED STATES. }

The above-entitled cause now coming on to be heard, there appeared Frank W. Claney, esq., for the plaintiffs; W. H. Pope, esq., appeared for the said defendant, The United States; G. L. Solignac, esq., representing the pueblo of Isleta. The parties announcing themselves ready, the trial of the cause was proceeded with, and the said cause not being completed the court adjourned until to-morrow.

15 And be it further remembered that thereafter, to wit, on the 6th day of May, A. D. 1896, the same being a day of the regular May term, the following among other proceedings were had, to wit:

J. FRANCISCO CHAVEZ }
vs. }
UNITED STATES. }

The above-entitled cause now coming on to be heard, all the attorneys in the cause being present, all the testimony in said cause was presented and the arguments were postponed until to-morrow.

16 And be it further remembered that on the 7th day of May, 1897, the same being a day of the regular May term, 1897, of said court, the following among other proceedings were had, to wit:

J. FRANCISCO CHAVEZ }
 vs. } No. 275. Joaquin Sedillo grant.
 THE UNITED STATES. }

The above-entitled cause now coming on to be further heard, all the attorneys in the case being present, after hearing the arguments of the counsel the court took the cause under advisement.

17 And on the trial of said cause the following testimony, oral and documentary, was offered and introduced:

18 In the Court of Private Land Claims, Santa Fe, New Mexico, May term, 1897.

J. FRANCISCO CHAVES AND THE PUEBLO OF ISLETA }
 vs. } No. 274.
 THE UNITED STATES. }

J. FRANCISCO CHAVES AND THE PUEBLO OF ISLETA }
 vs. } No. 275.
 THE UNITED STATES. }

On May 5th, 1897, the above-named cases came up for trial, and the following proceedings were had therein in open court:

Appearances: Frank W. Clancy, esq., for J. Francisco Chaves; G. L. Solignac, esq., for the pueblo of Isleta; William H. Pope, esq., assistant United Stat's attorney, for the Government.

Mr. CLANCY. I will read the petition.

Mr. CLANCY. We offer in evidence archive number 315, from the office of the surveyor-general of New Mexico (marked "Plaintiff's Exhibit A").

Also archive number 178 (marked "Plaintiff's Exhibit B").

Also a portion of archive number 371, that is, all of that archive that shows the inventory of the real estate belonging to Clemente Gutierrez and giving to each of the heirs their respective parts of the r'al estate (marked "Plaintiff's Exhibit C").

We also offer in evidence a deed made September 20th, 1818, by Jose Lorenzo de la Pena, for himself and his sister, Mariana, and his brother, Jose Rafael de la Pena, to Francisco Xavier Chaves, for an undivided fifth of the Bosque de los Pinos, this being an official translation made in the year 1855 by the official translator of the office of the surveyor-general for New Mexico (marked "Plaintiff's Exhibit D").

Also offer in evidence a deed from Francisco Sarracino, representing his mother, Maria Luisa Gutierrez, one of the children of Clemente Gutierrez, to Francisco Xavier Chaves, for an undivided interest 19 in the ranch of the Bosque de los Pinos, dated October 19th, 1821, and of this deed we offer an official translation made by

the official translator in the office of the surveyor-general for New Mexico, in the year 1855 (marked "Plaintiff's Exhibit E").

We also offer in evidence the translation of a deed made by the official translator of the office of the surveyor-general for New Mexico in the year 1855, from Juan Nepomuceno Gutierrez and Apolonia Gutierrez, to validate a sale made by their father, Loranzo Gutierrez, in the Bosque de los Pinos, dated December 27th, 1839 (marked "Plaintiff's Exhibit F").

We also offer in evidence an original deed, or document of evidence of title at least, dated May 3rd, 1808, from Lorenzo Gutierrez, in favor of the Indians of the pueblo of Isleta (marked "Plaintiff's Exhibit G").

We also offer in evidence a report by Manuel Lucero, an alcalde, to the governor of New Mexico, dated June 14th, 1826, as to certain disputes among the Indians, with regard to other lands in question here (marked "Plaintiff's Exhibit H").

We also offer in evidence an official certificate made by Jose Antonio Chaves Duran, who was an alcalde mayor of the pueblo of Isleta, as to the making of a measurement of these lands which are now claimed in these two cases, on the west side of the river between the lands of Isleta and the lands of Los Lentes (marked "Plaintiff's Exhibit I").

MR. POPE. We shall move to strike them out if upon an examination they are not competent.

MAY 6TH, 1897, 10 A. M.

J. FRANCISCO CHAVES, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified, upon dir^et examination, as follows:

By Mr. CLANCY:

Q. What is your name, age, and residence?

A. J. Francisco Chaves; my residence is Progresso, in Valencia County, New Mexico; age, nearly 64.

Q. Are you acquainted with the tract of land that is commonly known as Bosque de los Pinos, in Valencia County, New Mexico; and, if so, when did you first become acquainted with that tract of land?

À. Yes, sir; I think about 1839 I became personally acquainted 20 with it; at that time I lived at Los Padillas, which is now in the county of Bernalillo, the place of my birth.

Q. Who lived at the Bosque de los Pinos at that time?

A. Retainer of my grandmother's, who was then the owner of the place, by the owner, José Manuel Oguin.

Q. Who was the father of your grandfather?

A. Francisco Xavier Chaves.

Q. When did he die, if you know?

A. I only know by the records; I think in 1829, before I was born.

Q. From what has been told you and the family, do you know where he liv'd at the time of his death and for some years before that time?

A. He lived always at Los Padillas.

Q. Then he never re'ided at Bosque de los Pinos?

A. Never re'ided at Bosque de los Pinos.

Q. Do you know what, if anything, he did with the possession of Bosque de los Pinos before his death?

A. He possessed it, farmed it, kept cattle and sheep upon it; it was wooded from there to Los Padillas, a large body of timber there at that time; there is a pretty good-sized body of timber there now.

Q. Since the time that you have had personal knowledge of that property, who has had possession and control of it from that time down to the present?

A. My father, subsequently my mother, after my father's death in 1844, and then my mother married Dr. Counolly, and then it went to her heirs after her death. If you desire the names of the children I will give their names.

Q. Has that possession been in any way disturbed or encroached upon by other people?

A. Never.

Q. What are the boundaries of that particular piece of land called the Bosque de los Pinos?

A. Bounded on the north by the Isleta Indian pueblo lands; on the east by the old river bed; a stone marks the northeast boundary; and on the south by the town of Peralta; on the west by the present river.

Do you know under what title or deeds of conveyance, if any, your family has claimed and possessed that tract of land?

A. Yes, sir; we claim title under, I believe, Clemente Gutierrez and his heirs.

21 Q. Who were the owners of that piece of land?

A. At the time that my grandfather purchased—

Q. That is, you claim through his heirs?

A. There are several of them; Clemente Gutierrez, he already died; it was through his will.

Q. Examine this paper which I have offered in evidence in this case and marked "Plaintiff's Exhibit D, E, and F," and state if they are translations of the deeds from the Gutierrez heirs under which your family claim the Bosque de los Pinos.

A. Yes, sir; I believe they are correct translations of the copies of the deeds made to my grandfather.

Q. Do you know what has become of the originals of these deeds?

A. I do not, unless they are here in the surveyor-general's office.

Q. Have you made any search for them among your papers or those of your family?

A. Yes, sir; they are not at our place at all. I will state here that when the rebel troops had possession of our house in 1862—about the month of April, 1862—that nearly every paper—we had a very large amount of property—was destroyed, and a great many valuable in real estate were discovered afterwards among the corrals and the outhouses. Some are entirely lost.

Q. Who was J. Bonifacio Chaves?

A. He was my youngest brother.

Q. Is he living or dead?

A. He is dead.

Mr. CLANCY. Mr. Pope, will you admit that the records in the office of the surveyor-general show that the originals of these deeds were withdrawn from that office by J. Bonifacio Chaves about the year 1871,

which accounts for their absence from the files of that office, although it does not account for what became of them afterwards?

Mr. POPE. I will admit this.

Q. Have you made at any time, or caused to be made, search among the papers of your brother's for the originals of these deeds?

A. Yes, sir; I have, and I have not discovered anything. His wife became quite sick and she died in this city six or seven years ago, and I asked her to give me all the papers of my brother had that belonged to our family, and she gave me some papers, but none of these papers were among them, because I have all the papers that I got from her.

22 Q. Are you acquainted with the lands on the west side of the present river lying between the pueblo grant to the pueblo of Isleta and the lands of Los Lentes?

A. Yes, sir.

Q. In whose possession have these lands been since you have known them?

A. Well, originally—many years ago, say probably forty years ago—they were held chiefly by the people of the town of Los Lentes. There is a river runs up very near the sand hills and from that point south it is called Los Charcos—means the pools; water collects and runs, overflows the acequia, and remains for a long time, and close to the sand hills the Indians occupied a place there and the Indians of Isleta, but now—but most of them are within, I think, a mile of the town of Los Lentes—are occupied by the Indians of the town of Isleta; about a mile from the present site of Los Lentes is occupied by the people of Los Lentes, and from there north, probably two miles and a half, I do not know—well, about four miles—is occupied entirely by the Indians now.

Q. Have you ever heard that stretch of land called the compra?

A. Yes, sir; always that land has been called the compra; that is the way they spoke of that land.

Q. Have you ever known or heard from whom they purchased these lands?

A. No; I never.

Q. That is all.

Mr. POPE. That is all.

Mr. CLANCY. It is admitted by the United States to be a fact that the pueblo of Isleta has had open and notorious possession and use of lands on the west side of the Rio Grande along between the boundary of the pueblo and the lands of the Los Lentes as far back as the memory of the oldest man living within the pueblo can extend, and that such possession and use have been claimed to be under a purchase from the heirs of Clemente Gutierrez, of which some documentary evidence has been presented in the paper executed by Lorenzo Gutierrez, dated May 3rd, 1808, and that said paper, which is marked "Plaintiff's Exhibit G," and also Plaintiff's Exhibits H and I, come from the custody and control of the officers of said pueblo, who have had them as far back as memory can extend.

23 Mr. CLANCY. I desire to offer in evidence the original petition and grant to Ana de Manzanares for the tract of land commonly known as the San Clemente grant, and also the decree of this court confirming the claim for that grant (marked "Plaintiff's Exhibits J and K").

Mr. POPE. No objection.

Q. Col. Chaves, are you familiar with the section of country where are situated the lands in question in this case known as the San Clemente and Isleta grants?

A. Yes, sir; I am.

Q. And with the location of towns and other natural objects in that vicinity?

A. Yes, sir.

Q. Will you examine this sketch map and state where upon that the location of Los Lunas, Los Lentes, Los Pinos, the Rio Grande, and its old bed—whether they are approximately accurate or not.

A. This map that is made is substantially correct; it shows the lines of the Isleta grant and the lands in question, the San Clemente grant, and the Jose Sedillo grant, as far as I am able to ascertain the grant of Gutierrez; it also shows the Rio Grande now, and also the old bed of the river as it ran many years ago, beyond the memory of any living man, and the Rio Puerco; also Los Lunas and Los Lentes.

Mr. POPE. Q. Your only knowledge of the location of the Sedillo and Gutierrez grants is derived from these title papers you presented here?

A. Yes, sir; and the gentleman's (Mr. Pope) argument at the last term of court.

Mr. CLANCY. I will offer this sketch map in evidence (marked "Plaintiff's Exhibit L").

SHERWARD COLEMAN, a witness of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified upon direct examination by Mr. Clancy as follows:

Q. What is your business in life?

A. I am surveyor by occupation.

Q. Have you had occasion in connection with your business as surveyor to make any examination of the section of country just south of the pueblo of Isleta in this Territory?

A. Yes, sir.

24 Q. Can you from the knowledge derived from that examination stat' what is the distance from Los Lentes to the pueblo of Isleta?

A. At the time I made this survey it was six miles 39 chains and 54 links in a measured line from the church of the pueblo of Isleta with the old ruins of San Clemente; these old ruins of San Clemente are just below the town of Los Lentes, I should say about 600 yards from the chapel.

Q. In a straight line from the chapel to the ruins?

A. In a straight line in a southeasterly direction.

Q. In a north and south direction about how far is the chapel of Los Lentes to these old ruins?

A. Not over two or three hundred yards, I should think, without making a measurement of the place in question.

Q. That is all.

Mr. POPE. That is all.

SANTA FE, NEW MEXICO, June 4th, 1897.

I hereby certify that the above and foregoing six and a part pages contain a full, true, and correct transcript of all the testimony offered in evidence in the above-named cases.

W. J. McPHERSON,
Official Stenographer C. P. L. C.

25

PLAINTIFF'S EXHIBIT A, ARCHIVE 315.

[Translation.]

1.

1716

No. 449.

To the governor and captain-general:

I, Captain Antonio Gutierrez, a resident of the town of Albuquerque, and a native of this Kingdom, appear before you in due legal form, and I state that, being very much in need of lands on which to plant in order to support my family, and also to the end that my sheep may have room to scatter out, and there being an uncultivated and unoccupied tract of lands below Ysleta, apparently at a distance of two leagues, which formerly was held by Cristobal de Tapia, of which tract will you be pleased to make me a grant in the name of His Majesty in the same manner as it was held by said Cristobal de Tapia, and, is you be pleased to grant it to me, will you also order that the real possession be given me, designating to me boundaries and landmarks, in order that no prejudice may result to me in its possession?

Wherefore I ask and pray, with due humility, that you will be pleased to make me the grant that I ask for in the name of His Majesty, as one who represents his royal person, and I swear in the name of God our Lord, and by the sign of the Holy Cross, that this my petition is not in bad faith, and whatsoever is necessary, etc.

ANTONIO GUTIERREZ. [SCROLL.]

NOTE.—I ask and pray that the boundaries belonging to said tract be designated to me—on the north an arroyo with some cottonwood trees that comes down from the hills, on the south the pueblo of San Clemente, on the east the Del Norte River, and on the west the hills of the Puerco River; and I swear in due legal form that my petition is not in bad faith, and whatever is necessary.

ANTONIO GUTIERREZ. [SCROLL.]

Presentation.

At the town of Santa Fe on the fifth day of the month of November, in year one thousand seven hundred and sixteen, before me, Captain Felix Martinez, governor and captain-general of this Kingdom and provinces of New Mexico and castellan of its forces and garrisons for His Majesty, it was presented by the party therein named.

Decree and grant.

And, it having been examined by me, I treated it as properly presented in accordance with law, and, in view of the fact that it is His Majesty's

will that his lands should be settled and fortified, in his royal name I make to the petitioner the grant that he asks for, as he describes it and as Cristobal de Tapia formerly enjoyed it, without prejudice to a third party who may have a better right, and I command Captain Baltazar Romero that as soon as he be notified with this my decree he shall place the petitioner in real possession; and this shall serve him as a sufficient formal title for his protection, and when these proceedings shall have been had he will transmit this grant and possession to my civil and military secretary in order that he make a certified copy thereof, and that this original petition remain in the said archives; and in witness thereof I signed it with my civil and military secretary.

FELIX MARTINEZ. [SCROLL.]

Before me,

MIGUEL TENORIO DE ALBA, [SCROLL.]

Civil and Military Secretary.

26

PLAINTIFF'S EXHIBIT A, ARCHIVE 315.

[Spanish copy.]

Senor Goyor, y Captn. General:

El Capitan Antonio Gutierrez, vecino de la villa de Albuquerque y originario de este rno., ante Vsa. paresco en la mejor forma que haya lugar en derecho y digo: Allándome mui desacomodado de tierras en que poder sembrar para mantener mis obligaciones, y juntamente para que mi ganado se explaye, y allándose yermo y despoblado un sitio de tierras abajo de la ysetla á distancia al pareser de dos leguas, que antiguamente lo poseia Xptoval de Tapia, el qual sitio se a de servir Vsa. haserme mez. de él segun y como lo posecia dicho Xptoval de Tapia, en nombre de su Magd. y juntamente mandará siendo servido de consederme el que se me dé la real posesion, señalándome linderos y mojoneros para que posiendo no me pueda pidar (?) perjuicio, por todo lo qual á Vsa. pido y suplico con todo rendimiento sea mui servido consederme la merced que pido en nombre de su Magestad, como quien representa su divina imagen, y juro por Dios, nuestro Señor, y la senal de la santa cruz, esto mi escrito no ser de malicia y en lo nesesario, &a.

ANTONIO GUTIERRES.

OTROSI.—A Vsa. pido y suplico se me señalen los linderos que son pertecientes á dicho sitio, por el norte un arroyo de Alamos que baja de las lomas, por el sur el pueblo de San Clemente, por el oriente al rio del Norte, y por el poniente las lomas del rio Puerco, y juro en forma de derecho mi escrito no ser de malicia y en lo nesesario.

ANTONIO GUTIERRES.

PRESENTACION.—En la villa de Santa Fe, en cinco dias del mes de noviembre de mil setecientos y diez y seis años, ante mi el Capitan 27 Don Felix Martinez, Gobernador y Capitan General de este reyno y provincia del Nuevo Mejico y castillano de sus fuerzas y presidios por su Magestad auto de merced, la presentó el contenido y por mi vista la hube por presentada en quanto ha lugar en derecho y en atencion á ser

la mente de su Magestad el que sus tierras se pueblen y fortalecan, en su real nombre le concedo la mersed que el suplicante pide como lo expresa y antiguamente gosaba Xptobal de Tapia, sin perjuicio de terzero que mejor der'cho yenga y mando al Capitan Baltazar Romero que luego que sea requerido con este mi decreto, meta en posesion real al suplicante y este le sirva de bastante titulo en forma para su resguardo; y hechas las diligencias esta merced y posesion las remita á mi secretario de gobernacion y guerra para la testimonie; y quede este original en el dicho archibo; y para que conste, lo firmo con mi Secretario de Gobernacion y Guerra.

FELIX MARTINEZ.

Ante mi:

MIGUEL THENORIO DE ALBA,
Secretario de Gobernacion y Guerra.

28

PLAINTIFF'S EXHIBIT B; ARC. 178.

Se sacó testimonio de estas escripturas el año de 1736 *as.* en 31 de Agosto.

Foxas 8, No. 319.

SANCHEZ. [RUBRIC.]

Sea notorio, y sepan quantos esta carta de benta rl. vieren, como compareció ante mi el Capp. Ju. Gonzales Bas, alcalde mayor y capp. á guerra de dha. villa, su jurisdicion, y como digo compareció Dn. Diego Vazquez Borrego, á quien soy fe conosco, y dixo que dava, y con efecto dió en benta rl. á Dn. Nicolas de Chaves, un sitio de tierras para agostar ganados menores y mayores, y caballadas, con tierras de lavor de pan coxer, el qual huvo por benta rl. á los erederos Juachin Sedillo; con mas, dixo, que dava y dió junto con esta benta real en ella anexo, ena donacion que al dho. Dn. Diego Basques Borrego le yso Diego Padilla, en la qual consta la libre y genl. administracion para ella rsara á su voluntad el qual sitio eno, y otro sitio abajo de la Ysleta que comunmente llaman San Martin, y como consta por sus ystrumentos y corren sus linderos por la parte del norte con tierras del Pueblo de la Ysleta, y por el poniente con el río Puerco, por el sur con la caza del rancho de Diego Padilla, entrando en esta escritura la referida donacion, y por el oriente con el río del Norte; y como digo, dha. benta se la ase y da dho. Diego Vasques Borrego, al susodho. Dn. Nicolas de Chaves por el precio y quantia de seys sientos ps., los que confiesa dho. Borrego haber resibido á su contento y satisfacion, de que se da por contento, pagado, y satisfecho, sobre que para ello le entregó sus ystrumentos y renuncia su proprio fvero y domisilio, y las leyes de la numerata pecunia, prueba y paga, y la de mancomunidad que abla

29 sobre la mitad del justo precio que se las da libres de todo senso, tributo, y otra ypoteca para que las gose por si, sus hijos erederos, y susesores, y que si acaso dho. sitio valga mas ó balar pueda, le ase gracia y donacion pura, mera, yreboicable, que el derecho llama yntervivos; sobre que retencion todas las leyes que á su favor pueda alegar, sobre que no le será puesto pleyto ni demanda alguna por el dho. Dn. Diego Borrego, sus hijos erederos, y susesores, y que si acaso se lo pusieren que no sean oydos en jyycio ni fuera del, sobre que da poder quan bastante se

requiere á las justicias, apremial complimiento de esta escritura como si fuera por sentencia diñitiva de jue^s competente de *jues competente*, y que si algun pleyo se les ofresieren sobre las dhas. tierras ó sitio, sacarara la cara para defenderlo asta dejarlo en quieta y pasifica posesion, y al saneamiento obliga su persona y bienes rayses y nuebles abidos y por aber, sobre que renuncia la ley sit cumbenerit e jurisdicionem; asi lo otorgó ante mi dho. alcalde mayor, de que doy fee, y lo firmó conmigo, y dos testigos de mi asistencia actuando ante mi como jue^s receptor; en el presente papel porque el sellado no corre en estas partes; es fecho, en dies y seys de agto. de mil setesientos treynta y seys as.

DIEGO BASQUES BORREGO. [RUBRIC.]
JU. GONSALEZ BAS. [RUBRIC.]

Tto: PHILIP BARELA. [RUBRIC.]
Tto: YSIDRO SANCHEZ. [RUBRIC.]

30 Certified copy was made of these titles in the year of 1736 on August 31.

SANCHEZ. [RUBRIC.]

Let it be notorious and know all who this letter of real sale may see that there appeared before me Captain Juan Gonzales Bas, alcalde mayor and war captain of the said villa and its jurisdiction, and as I say personally appeared Don Diego Vasquez Borrego, whom I certify I know, and he said: That he gave and in effect did give in real sale to Don Nicolas de Chaves a tract of land for the pasturage of small stock, neat cattle, and horses, and also aggriicultural lands which he acquired by real sale from the heirs of Joaquin Sedillo, and he also said that he gave and did give together with this real sale and annexed thereto a donation which to the said Diego Basques Borrego was made by Diego Padilla, in which appeared the free and general administration in order that he might make use according to his will of the said tract, the one and the other situate below Isleta, commonly called San Martin, and as it appears by his instruments their boundaries are on the north lands of the pueblo of Isleta and on the west the Rio Puerco, on the south the house of the rancho of Diego Padilla, the said donation being included in this conveyance, and on the east the Rio Grande, and as I say the said Diego Vasques Borrego makes and gives the said sale to the said Don Nicolas de Chaves in the price and sum of six hundred dollars, which the said Borrego acknowledges to have received to his content and satisfaction, and he says he is contented, paid, and satisfied, and in regard to which he delivers his instruments of title and he renounces his own right and domicil and the laws of non numerata pecunia proof and payment, and that of things held in common which treats of the one-half of the just price; that he gives them free from all tax, tribute, and other burthen in order that he may enjoy them for himself, his children, heirs, and successors, and that in case the said tract 31 is worth more or may be worth more he makes him gift and donation of the same, pure, mere, irrevocable, which the law calls inter vivos; in which he renounces all the laws which may be in his favor, and no suit nor demand shall be brought against the same by

the said Don Diego Borrego, his children, heirs, and successors, and in case any should be brought that they may not be heard either in court or out of it; and he gives all power necessary to the justices of His Majesty in order that with all rigor of law they may require and compel him to the fulfillment of this instrument as if it were by definite decision of a competent judge; and if any suit be brought against the said lands or tract he will appear for the defense until he leaves him in quiet and peaceable possession; and for its warranty he pledges his person and his property, real and moveable, that which he now has and that which he may hereafter have, with regard to which he renounces the law sit cumbenerit and jurisdiccion; thus he executed it before me, the said alcalde mayor, to which I certify, and he signed it with me and two assisting witnesses acting before me by delegated authority (juez receptor) on the present paper because the stamped paper is not current in these parts; it is done on the sixteenth day of August of the year one thousand seven hundred and thirty-six.

DIEGO BASQUES BORREGO. [RUBRIC.]
JU. GONZALES BAS. [RUBRIC.]

Witness:

PHELIPE BARELA. [RUBRIC.]

Witness:

ISIDRO SANCHEZ. [RUBRIC.]

En esta villa de San Phe. de Alburquerque, en siete dias del mes de enero del año de mil setecientos y treynta y quatro, ante mi, el Capp. Ju. Gonzalez Baz, alcalde mayor y capp. á guerra de dha. villa y su jurisdiccion, comparesi Diego Padilla, á quien doy feee conoseco, quien delante de dos testigos dixo: que dava y tierra de el qual, como mas largamente consta, tubo, y pose en donacion que á su favor de dho. Padilla le otorgó con tierras de Joachin Sedillo; por el oriente, con el rio del Norte; por el sur con tierra de dho. Diego Padilla, sirviendo de señal en dho. lindero la mediania que ay de dos casas que tenia fabricadas dho. Padilla, proximas al lindero que tenia en la referida donacion; y por el poniente con el lindero que la escritura resa de todo el sitio que dho. Padilla tiene y como digo: de dhas. tierras le ase gracia y donacion, y traspasa su proprio fuero, domicilio, y señorío el sobre dho. Diego Padilla, con consentimiento de su esposa e hijos, en la persona de el susodho. Dn. Diego Borrego, sin mas yntereza que su yntima voluntad, para que las gose por si, sus hijos y erederos, aora y siempre, sobre que es dha. donacion pura, mera, perfecta, e yntreboable, que el derecho llama yntervibos, y en que renuncia su propio fuero, domicilio y besindad y las leyes de la numerata pequenia, prueba, y que se las da libres de todo senso, tributo, y otra yptoteca que fuera su voluntad, y que renuncia todas las leyes que á su favor puedan ablar, con la mayor de el derecho; sobre que no se le pondrá pleyo ni demanda, en ningun tiempo, por si, sus hijos erederos y susesores, y que si á caso se lo pusieren que no sean oydos en juycio ni fuera de el, y que da poder

33 bastante á las justicias de Su Magd. de qualesquiera parte, para que con todo rigor le compelan y apremien al cumplimiento de esta donacion, como si fuera por sentencia definitua de jues competente, pasada en cosa juzgada; y al cumplimiento y saneamiento obliga su persona y bienes muebles, rayses, abidos y por aber, y renuncia todo quanto á su fabor pueda alegar, y la ley si cumvenerit jurisdicionem. Así lo otorgó ante mi dho. alcalde mayor, de que doy fe, y lo firmó conmigo y dos testigos de mi asistencia, á falta de escribano publico y real que no lo ay en este reyno.

JU. GONZALEZ BAS. [RUBRIC.]
DIEGO PADILLA. [RUBRIC.]

Tto.: ANTO. MONTOYA. [RUBRIC.]
Tto.: YSIDRO SANCHEZ. [RUBRIC.]

34

Instrument of donation.

[RUBRIC.]

In this villa of San Felipe de Albuquerque, on the seventh day of Januuary of the year one thousand seven hundred and thirty-four, before me, Captain Juan Gonzalez Bas, alcalde, mayor and war captain of the said town and its jurisdiction, personally appeared Diego Padilla, whom I certify I know, who, in the presence of two witnesses, said that he gave and did give freely to Don Borrego, to wit, a piece of land which, as will hereinafter more fully appear, he had and possesses by donation, which, in favor of the said Padilla, was made by Captain Antonio Gutierrez, and its boundaries are: On the north, lands of Joaquin Sedillo; on the east, the Rio Grande; on the south, land of the said Diego Padilla, there serving as a landmark on the said boundary, the midway line between the two houses which the said Padilla built near the boundary line on the said donation, and on the west with the boundary line called for in the title papers of the whole tract which the said Padilla has; and as I say of the said lands, he makes gift and donation and conveys his own right, domicil, and seignory, the said Diego Padilla, with the consent of his wife and children, to the said Don Diego Borrego, without any consideration other than his own will, in order that he may enjoy them for himself, his children, and heirs now and forever, and the said donation is pure, mere, perfect, and irrevocable, which the law calls inter vivos, and which he renounces his own right, domicil, and residence and the laws of non numerata pecunia proof and payment, and he gives them to him free of all tax, tribute, or other burthen, in order that he may sell them, exchange them, and alienate them to any person he may please, and that he renounces all the laws which may lie in his favor, together with the general law of right; and against him no suit nor demand shall ever be brought, either by himself or by his children, heirs, and successors, and in case they should bring any, let them 35 not be heard either in court or out of it; and that he give sufficient power to the justices of His Majesty of any place to compel and oblige him with all rigor to the fulfillment of this donation as if it were by definite decision of a competent judge given in a matter adjudged; and to the fulfillment and warranty he binds his person and the property, moveable and real, which he now has and that which he may

hereafter have; and he renounces all that which in his favor he might allege, and the law si cum venirit and jursdicionem. Thus he executed it before me, the said alcalde mayor, to which I certify, and he signed it with me and two assisting witnesses in the absence of a notary public or royal, of which there is none in this Kingdom.

JU. GONSALES BAS. [RUBRIC.]
DIEGO PADILLA. [RUBRIC.]

Witness :

ANTO. MONTOYA. [RUBRIC.]

Witness :

YSIDRO SANCHEZ. [RUBRIC.]

36 *Carta de escritura de Venta Real á favor de Dn. Diego Borrego.*

[RUBRIC.]

En esta villa de San Phe. de Albuquerque, en once dias de el mes de enero de el año de mil setesientos y treynta y quatro años, ante mi, el Capp. Ju. Gonsalez Bas, alcalde mayor y capp. á guerra de dha. villa y su jurisdicion, comparesió Antto. Sedillo, hijo lexitimo de Joaquin Sedillo y eredero forzoso de el dho., quien dijo: que dava y dió en benta real un sitio que está en el rio abajo, y abajo de el pueblo de la Ysleta, el qual sitio es para agostar ganados mayores, con mas tierras labradas y eriasas para poder laborear, y como digo da, y dió el dho. Antto. Sedillo en benta real el referido sitio con pareser y consentimiento de su madre y de otros ermanos quienes le amplearon facultad para ello, por aber muerto adeudado dho. Joachin y para remunerar la cantidad que deuia; y confiesa dho. Antonio Sedillo que dho. sitio lo ubo su padre, por merced, en nombre de su magd., parte y parte que ubo y poseya en benta real como consta por los cinco ystrumentos que entregó; y de el dho. sitio corren los linderos por el norte con el lindero de la legua del dho. pueblo de la Ysleta; por el oriente con el rio de el Norte; por el sur con un alamo *coate* que llaman algunos alamo de la culebra; y por el poniente con la sera de el rio Puerco; y dice: que dho. sitio se lo da á Dn. Diego Borrego, por el precio y quantia de dos sientos pesos, en reales, los que confiesa dho. Antto. Sedillo aber reseuido á su contento y satisfacion, de que se da por contento, pagado y

satisfecho, y que si mas bale, ó baler pueda, le ase gracia y donacion

37 pura, mera, perfecta, y rebovable, que el derecho llama ynterbiunos;

sobre que renuncia su propio fvero, domisilio y vesindad, y las leyes de la numerata pecunia, su propio fvero, y paga, y la de mancomunidad que abla sobre la mitad de el justo precio; y que se las da libres de todo senso, tributo, y otra ypoteca, para que las pueda bender, cambiar y enagenar como sullos que son, á la persona que fuere su boluntad; y que renuncia todas las leyes que puedan ablar á su favor, y que sobre ello no le pondrá pleyto ni demanda en ningun tiempo por si, sus hijos erederos y suscesores, y que si acaso se lo pusieren, que no sean oydos en *en* juycio ni fuera del, y q. da poder bastante á las justicias de su magestad, de qualesquiera parte que sea, para que con todo rigor le compelan y apremien al cumplimiento de esta escritura, como si fuera por sentencia definitiva de juez competente, pasada en cosa

jusgada; y al saneamiento de esta escritura obliga su persona, y bienes rayses, y muebles abidos y por aber, sobre que renuncia todo quanto á su favor pueda alegar y la ley si cum venerit jurisdicionem; así lo otorgó ante mi dho. alcalde mayor, de que doy fe; y lo firmó comigo y dos testigos de mi asistencia, á falta de escribano publico y real, que no lo ay en este reyno.

ANTTO. SEDILLO. [RUBRICA.]
JU. GONZALES BAS. [RUBRICA.]

Tto. YSIDRO SANCHEZ. [RUBRICA.]
Tto. SALUADOR MARTINEZ. [RUBRICA.]

38 *Instrument of real sale of agricultural land to Don Diego Borrego.*

In this villa of San Felipe de Albuquerque, on the eleventh day of the month of January of the year one thousand seven hundred and thirty-four, before me, Captain Juan Gonzales Bas, alcalde mayor and war captain of the said villa and its jurisdiction, personally appeared before me Antonio Sedillo, legitimate son of Joaquin Sedillo, and forced heir of the aforesaid, who said that he gave and did give in real sale a tract of land down the river and below the pueblo of Isleta, which tract is for the pasturage of large and small stock, with some broken lands and some cultivable and unbroken; and as I say, the said Antonio Sedillo gives and did give in real sale the said tract, after consultation and with the consent of his mother and his brothers and sisters, who gave him authority for the same because the said Joaquin died in debt, and in order to procure the amount which he owed; and the said Antonio Sedillo acknowledges that the said tract was acquired by his said father in part by grant in the name of His Majesty and in part acquired and held under real sale, as shown by five instruments which he delivered; and the boundaries of the said tract are: On the north the line of the league of the Isleta, pueblo; on the east the Rio Grande; on the south a twin alamo called by some the Culebra, and on the west the ridge of the Puerco River; and he says that the said tract he gives to Don Diego Borrego for the price and sum of two hundred dollars in money, which the said Antonio Sedillo to have received to his content and satisfaction, and he says he is contented, satisfied, and paid, and that if it is worth more or may be worth more he makes him gift and donation of it pure, mere, perfect, and irrevocable, which the law calls inter vivos, in which he renounces his own right, domicil', and residence, and the laws non numerata pecunia, proof and payment, and that of things held in common which treats of the one-half of the just price, and that he gives them to him free from all tax, tribute, or other burthen in order that he may sell, exchange, 39 and alienate them as his own, which they are, to whomsoever he pleases; and that he renounces all the laws which may be in his favor; and that no suit nor demand shall ever be brought against him either by himself, his children, heirs, or successors, and in case any shall be brought let them not be heard either in court or out of it; and he gives full power to the jusyices as His Majesty of whatsoever place, that they may with all rigor of law compel and require the fulfillment of this instrument as if it were by definite decision of a competent judge passed upon a thing adjudged; and to the warranty of this title

he pledges his person and property, real and personal, present and to come; in which he renounces all that may be alleged in his favor, and the law sicunvenir ejurispcionen; thus he executed it before me, the said alcalde mayor, to which I certify, and he signed it with me and two assisting witnesses in the absence of a notary public or royal, of which there is none in this kingdom.

ANTO. SEDILLO. [RUBRIC.]
JU. GONZALES BAS. [RUBRIC.]

Witness':

SALVADOR MARTINES. [RUBRIC.]
ISIDRO SANCHEZ. [RUBRIC.]

40

PLAINTIFF'S EXHIBIT C.

[From Archive 371.]

Autos y ymbentario, divicion y particion de bienes, que quedaron por fallecimiento de Dn. Clemente Gutierrez, entre su muger y cinco hijos, concluidos en el año de 1785.

Auto y principio de ymbentario.

En la Hacienda de San Ysidro del Pajarito, en treze dias del mes de mayo de mil setecientos ochenta y cinco años, Yo, el mencionado anterior Govor., pasé á la casa y morada de Da. Maria Apolonia Baca, y estando precente, le leí y notifiqué el auto consecutivo á su peticion, sobre lo qe. le recibí juramento conforme á dro. para que manifestase todos los bienes raízes, muebles, derechos y acciones que poseia su difunto marido, Dn. Clemente Gutierrez, sin encubrir ni disimular ningunos; de lo que entendida, dixo: que está prompta á poner de manifiesto los que consten y de que tenga noticia, que verificó inboiendo á Dios en la forma siguiente:

	Pessos de Pta. Pessos de la Tierra.
Primeramente, el sitio de Sn. Ysidro del Pajarito, que consta con sus linderos de su respectiva escritura No. 1, e importa	1,200, 0
Yd., la cassa y morada qe. fue del difunto Dn. Clemente Gutierrez, constante de diez y ocho piezas, en qe. se incluyan la capilla y sacristia de la haxa, excluyéndose de abalno cinco piezas pertenecientes á Dn. José 41 Mariano de la Pena, e igual no. de Dn. Franco Garcia, estimados las diez y seis primeras en	,500, 0
Yd., un solar en el mismo sitio que corresponde á una cassa qe. vendió	-----
Passa á la Bta	1,700, 0
	Pessos de Pta. Pessos de la Tierra.
Por la Buelta	1,700, 0
Dn. Diego Antonio Baca como consta del recivo No. 2, abaluado dho. solar..	,010, 0
Yd., un rancho en la birtientes de Navaho, cuyas aguas, tierras, pastos y linderos constan en sus respectivas quatro escrituras No. 3, pasadas por su abalnu, que es de.....	5, 600, 0
Yd., un rancho abaxo de los linderos del Pueblo de la Ysleta llamados, e comunmte. Sn. Clemente, Barrancos y los Pinos, de qub se está en posesion aunque no hay documto. de sus linderos, estimado en	1,200, 0
Ydn., una aucion de tierras en el bosque de José Sanchez en	-----

Proceedings and inventory, division and partition of the property which was left at the death of Don Clemente Gutierrez among his wife and five children, concluded in the year 1785.

Order and beginning of the inventory.

At the estate of San Ysidro del Pajarito, on the thirteenth day of the month of May of the year one thousand seven hundred and eighty-five, I, the said governor, proceeded to the house and dwelling of Dona Maria Apolonia Baca, and, she being present, I read and notified to her the order following her petition and administered to her the legal oath in order that she might make a statement of all the property, real, personal, rights and shares possessed by her defunct husband, Don Clemente Gutierrez, without concealing or withholding any of the same, and she having understood, said that she was ready to make a statement of that existing and of that of which she has information, which she verified, swearing by God, in the form following:

	Hard dollars. Current dollars.
First. The tract of San Isidro del Pajarito, which is shown with its boundaries in its respective deed No. 1, and it is worth	1,200.0
Idem. The house and dwelling which belonged to the defunct Don Clemente Gutierrez, containing eighteen rooms, among which are included the 43 chapel and the sacristy of the estate, excluding from the valuation five rooms belonging to Don Jose Mariano de la Pena and an equal number belonging to Don Franco Garcia, the first sixteen estimated at	500.0
Idem. A house lot on the side tract corresponding to a house which was sold.	

To be carried forward	1,700.0
-----------------------------	---------

	Hard dollars. Current dollars.
Brought forward	1,700.0
By Don Diego Antonio Baca, as appears by receipt No. 2, the said house lot valued at	010.0
Idem. A ranch at the Virtientes de Navajo, the lands, waters, pastures, and boundaries of which are shown by its four deeds No. 3, respectively, valued at	5,600.0
Idem. A ranch below the boundary of the pueblo of Isleta, commonly called San Clemente, Barrancos, and Los Pinos, of which they have possession, although there is no title deed of its boundaries, estimated at	1,200.0
Idem. A share in lands of the bosque of Jose Sanchez, at	

* * * * *

Se le ha señalado á Da. Maria Apolonia Baca, etc.

	Pesos de Pta. Pesos de la Tierra.
Se le adjudica la mitad del sitio de Sn. Ysidro de Pajarito por su respectivo abaloo	,600,0
La mitad de la casa de su morada en	,250,0
La mitad de vn solar en el mismo sitio en	,005,0
La mitad del Rancho de Navajo	2,800,0
	* * * * *

	Pesos de Pta. Pesos de la Tierra.
La mitad del Rancho de Sn. Clemente en	,600,0
Ydn. La mitad de las tierras de bosque de Jose Sanchez, que no tiene tasacion	*
	* * * * *

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[From Archive 371.]

There has been assigned to Dona Maria Apolonia Baca, etc.

	Hard dollars. Current dollars.
There is adjudged to her one-half of the tract of San Isidro de Pajarito according to its respective valuation	,600.0
One-half of her dwelling house.....	,250.0
One-half of a house lot on the said tract.....	,005.0
One-half of the Rancho de Navajo.....	2,800.0
One-half of the Rancho of San Clemente.....	,600.0
Idem. One-half of the lands of the bosque de Jose Sanchez, which is not valued.....	*

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[From Archive 371.]

Hijuela de Dn. Lorenzo Gutierrez.

Hijuela de Dn. Lorenzo Gutierrez á quien como á hijo y heredero de su difunto padre, Dn. Clemente Gutierrez, en la mitad de los bienes raízes, muebles y dependencias que se contienen en el ynbentario le tocan y perteneцен, etc.

	Pessos de Pta. R. G. Pessos de la Ta. R. G.
Se le adjudican la quinta parte de la mitad del sitio de Sn. Ysidro de Pajarito.....	,120,0,0
La quinta parte de la mitad de vn solar en el mismo sitio.....	,001,0,0
La quinta parte de la mitad del Rancho de Navajo en	,560,0,0
La quinta parte de la mitad del Rancho de San Clemente en	,120,0,0
La quinta parte de la mitad de las tierras del bosque de Jose Sanchez.....	*

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[From Archive 371.]

Schedule of Don Lorenzo Gutierrez.

Schedule of Don Lorenzo Gutierrez, to whom as a son and heir of his defunct father, Don Clemente Gutierrez, of the one-half of the property, real and personal, and debts due the estate contained in the inventory there belongs and pertains, etc., etc.

	*
There is adjudged to him the fifth part of the one-half of the tract of San Isidro de Pajarito.....	,120,0,0
The fifth part of one-half of the value of a house lot in the said tract.....	,001,0,0
The fifth part of the one half of the Rancho de Navajo.....	,560,0,0
The fifth part of one-half of the Rancho de San Clemente	,120,0,0
The fifth part of one-half of the lands of the bosque de Jose Sanchez	*

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[From Archive 371.]

Hijuela de Da. Lorenzo Gutierrez, muger legitima de Dn. Franco. Anto. Garzia, etc.

	*
Se la adjudica la quinta parte en la mitad del sitio de Sn. Ysidro de Pajarito.....	,120,0,0
La quinta parte de la mitad del Rancho de Sn. Clemente en	,120,0,0
La quinta parte de la mitad de las tierras del bosque de Jose Sanchez.....	*

[From Archive 371.]

Schedule of Dona Lorenzo Gutierrez, legal wife of Don Francisco Antonio Garzia, etc., etc.

	Hard dollars R. G. Current dollars R. G.
There is adjudged to her the fifth part of the one-half of the tract of San Isidro de Pajarito.....	, 120. 0. 0
The fifth part of the one-half of a house lot in the side tract	, 001. 0. 0
The fifth part of the one-half of the Rancho de Navajo	, 560. 0. 0
The fifth part of the one-half of the Rancho of San Clemente.....	, 120. 0. 0
The fifth part of the one-half of the lands of the bosque of José Sanchez.	

[From Archive 371.]

Hijuela de Da. Maria Manuela de la Soledad Gutierrez, muger legitima de Dn. José Mariano de la Pena, etc.

	Pessos de Pta. R. G. Pessos de la Ta. R. G.
Se le adjudica la quinta parte de la mitad del sitio de Sn. Ysidro de Parjarito	, 130. 0. 0
La quinta parte de la mitad de vn solar en el mismo sitio en	, 001. 0. 0
La quinta parte de la mitad del Rancho del Navajo en	, 560. 0. 0
La quinta parte de la mitad del Rancho de Sn. Clemente.....	, 120. 0. 0
La quinta parte de la mitad de las tierras del bosque de José Sanchez	

[From Archive 371.]

Schedule of Dona Maria Manuela de la Soledad Gutierrez, legal wife of Don Mariano de la Pena, etc., etc.

	Hard dollars, R. G. Current dollars, R. G.
There is adjudged to her the fifth part of the one-half of the tract of San Isidro de Pajarito.....	, 120. 0. 0
The fifth part of the one-half of a house lot in the said tract.....	, 001. 0. 0
The fifth part of the one-half of the Rancho de Navajo.....	, 560. 0. 0
The fifth part of the one-half of the Rancho de San Clemente.....	, 120. 0. 0
The fifth part of the one-half of the lands of the Bosque de Jose Sanchez.	

[From Archive 371.]

Hijuela de Da. Maria Luise Gutierrez, hija menor de Dn. Clemente Gutierrez, etc.

	Pessos de Pta. R. G. Pessos de Ta. R. G.
Se le adjudica la quinta parte de la mitad del sitio de Sn. Ysidro de Pajarito	, 120. 0. 0
La quarta parte de la cassa morada del difunto en su correspte. Abalno	, 125. 0. 0
La quinta parte de la mitad de vn solar en el mismo sitio de Pajarito.....	, 120. 0. 0
La quinta parte de la mitad del Rancho de Navajo.....	, 560. 0. 0
La quinta parte de la mitad del Rancho de Sn. Clemente.....	, 120. 0. 0
La quinta parte de la mitad de las tierras del Bosque de Jose Sanchez	

[From Archive 371.]

Schedule of Dona Maria Luise Gutierrez, minor daughter of Don Clemente Gutierrez, etc., etc.

	Hard dollars, R. G. Current dollars, R.G.
There is adjudged to her the fifth part of the one-half of the tract of San Isidro de Pajarito.....	, 120. 0. 0
The fourth part of the dwelling house of the defunct in its corresponding valuation.....	, 125. 0. 0
The fifth part of the one-half of a house lot in the said tract of Pajarito.....	, 001. 0. 0
The fifth part of the one-half of the Rancho de Navajo.....	, 560. 0. 0
The fifth part of the one-half of the Rancho of San Clemente.....	, 120. 0. 0
The fifth part of the one-half of the lands of the Bosque de Jose Sanchez.....	,

[From Archive 371.]

Hijuela de Da. Juana Gutierrez, hija menor de Dn. Clemente Gutierrez, etc.

	Pesos de Pta. R. G. Pesos de la Ta. R. G.
Se le adjudica la quinta parte de la mitad del sitio de Sn. Ysidro de Pajarito en	, 120. 0. 0
La quarte parte de la casa Morada del difunto en su correspte. Abalno.....	, 125. 0. 0
La quinta parte de la mitad de un solar en el mismo sitio de Pajarito.....	, 001. 0. 0
La quinta parte de la mitad del Rancho de Navajo en	, 560. 0. 0
La quinta parte de la mitad del Rancho de Sn. Clemente en	, 120. 0. 0
La quinta parte en la mitad del Rancho o Bosque de Jose Sanchez	,

[From Archive 371.]

Schedule of Dona Juana Gutierrez, minor daughter of Don Clemente Gutierrez, etc., etc.

	Hard dollars, R. G. Current dollars, R. G.
There is adjudged to her the fifth part of the one-half of the tract of San Isidro de Pajarito.....	, 120. 0. 0
The fourth part of the dwelling house of the defunct in its corresponding valuation.....	, 125. 0. 0
The fifth part of the one-half of a house lot in the said tract of Pajarito	, 001. 0. 0
The fifth part of the one-half of the Rancho de Navajo.....	, 560. 0. 0
The fifth part of the one-half of the Rancho of San Clemente	, 120. 0. 0
The fifth part of the one-half of the lands of the Bosque de Jose Sanchez	,

PLAINTIFFS' EXHIBIT D.

Equivalent to the third seal, for the year 1818.

(Signed)

FRANCISCO ORTIZ. [RUBRIC.]

In the town of San Felipe Neri de Albuquerque, on the twentieth day of the month of September, one thousand eight hundred and eighteen, before me, Don Josef Mariano de la Pena, senior judge thereof, acting by appointment, with attending witnesses, in the absence of all notaries, personally appeared before me Don Francisco Xavier Chavez, resident of the town of Los Padillas, and Don Jose Lorenzo de la Pena, of the town of Pajarito, both within this jurisdiction, Pena stating that by authority and consent of his sister Dona Mariana and his brother Jose Rafael de la Pena, having acquired, by the division between five brothers, from their grandmother and mother, Dona Maria Martina de la Soledad Gutierrez,

a piece of land in the grove called Los Pinas, he gives, and in effect did give, in legal sale, now and forever, unto the said Mr. Chavez and his heirs, the aforesaid piece of land, without stating the number of varas, not being as yet divided (or) measured, but being the succession of brothers, in which disvision he is in the second (degree) on whichever side said premises may be measured, which premises are bounded on the north by land of the pueblo of Isleta, on the south by lands known as those of Los Lentes, on the east by the hills, and on the west by the river del Norte, which inheritance he sold, with its entrances, exits, uses, customs, rights, and servitudes (servidumbres), free from all obligation and encumbrances whatever, in the price and sum of one hundred and fifty dollars, in sealed money of the royal mint, to his entire satisfaction, for which he renounces the exception of the nan numerata (not ready money), its proof and payment of the receipt, and the others which refer to them, at any time; that the said one hundred and fifty dollars are the legitimate value in which he sold said land, which he considers to be its just value, and not worth more, and if it should be worth more, he grants and donates the same to the purchaser unconditionally, completely, perfectly, and irrevocably, which is termed in law intervivas (during life and irrevocable), with the exhibition and renunciation of the laws relating to fraud and those of the royal ordinance, with all others made in the court of Alcala de Enareo; from now he abandons and (quitclaims) his brother heirs from all the right and interest held by him in the said land, transferring the same to the purchaser and his heirs that he may use the same as legally his, acquired by a just title, which is this conveyance; and for the security and guaranty of this sale, the conveyer bound his person and property possessed, or which he may hereafter possess, with authority and submission to the royal justices of His Majesty, to compel and press him to its fulfillment with all the rigor of the law, as by execution in the case of judgment rendered in a case tried, consented to, and not appealed; he renounced his proper residence and vicinity, the law of eit combenerit and the general one in law. In witness whereof he has so executed (this conveyance), signing the same with me, the said senior justice, and those in my attendance, on the aforesaid day, with the further provision that if suit is instituted against him on account of said sale, he will defend the same until Chavez is left in peaceful and quiet possession, and when he can do no more, he will return the same amount, and will further pay him the improvements he may have made; to all which I certify.

(Signed) JOSE MARIANO DE LA PENA. [RUBRIC.]

*For himself and for his sister Dona Mariana
and his brother Jose Rafael.*

(Signed) JOSE LORENZO DE LA PENA. [RUBRIC.]

Attending witness:

SANTIAGO DE LA CRUZ BERTIA. [RUBRIC.]

Attending witness:

(Signed) AMVROSIO ARMIJO. [RUBRIC.]

(Endorsed:) Surveyor-general's office, translator's department, Santa Fe, N. M., June 11, 1855. I certify the foregoing to be a translation of Document D, in claim No. 3, to the Bosque de los Pinos. Davis V. Whiting, translator.

PLAINTIFF'S EXHIBIT E.

In the jurisdiction of San Augustin de la Isleta, on the 19th day of the month of October, one thousand eight hundred and twenty-one, before me, Don Manuel Ruvi, justice (alcalde) of the same, and before the secretary of the same in its corporation, personally appeared the urban captain of cavalry, Don Francisco Xavier Chavez, and Don Francisco Sarracino, representing the person of his mother, Dona Maria Luisa Gutierrez, in the name of and representing said lady, residence of this jurisdiction, the first of the town of Los Padillas and the second of Pajarito, Sarracino stating that, having acquired by inheritance in the division between fial brothers, as heirs of the deceased Don Clemente Gutierrez and Dona Apolonia Baca, the fifth part of the farm (rancho) of the grove known by the name of Los Pinas, within the boundaries and within its proper place, on the north side by the league of pueblo of Isleta, on the south residents of Valencia, on the east the plain, and on the west the river Del Norte, which he gave, and in effect did give by legal sale from now and forever unto said Mr. Chavez and his heirs in the price and sum of one hundred and fifty dollars in money to his satisfaction, free from all obligation or encumbrance whatsoever, with its entrances, exits, uses, customs, rights, and servitudes (servidumbres), by which he renounces the exception of the non numerata (not ready money), its proof and payment of the receipt; that the aforesaid one hundred and fifty dollars are the legitimate value in which he sold said inheritance, which he considers to be its just value, and not worth more; and if it should be worth anything more the remainder he grants and donates to the purchaser unconditionally, complete, perfect, and irrevocably, which is termed in law intervivos (during life and irrevocable), with the exhibition and renunciation of the laws relating to frauds, and tho'e of royal ordinances, with all others made in the court of Aleala de Enares; and from now said lady and heir heirs abandon all right and interest they have to said inheritance, transferring the same to the purchaser and his heirs, that he may use the same as legally his, acquired by a just totle, which is this conveyance; and for the security and guaranty of this sale the conveyer bound the person and property possessed by said lady, with authority and submission to the royal justices of His Majesty for its fulfillment, and as her representative to compel and press him with all the rigor of the law, as by execution in the case of a judgment rendered in a case tried, consented to, and not appealed, he renounces his own residence and vicinity the law of cit combenerit and the general one in law. In witness whereof he has executed this (conveyance), signing the same with me, the aforesaid justice (alcalde), and on the present paper, for the want of stamped, the party interested binding himself to attach (thereto) a sheet of the proper seal. All before the secretary. To which I certify.

(Signed)

MANUEL RUVI DE CELIS. [RUBRIC.]

By direction of madam, my mother, Dona Maria Lu Luisa Gutierrez.

(Signed)

FRANCISCO SARRACINO. [RUBRIC.]

(Signed)

JOSE MARIANO DE LA PENA, [RUBRIC.]

Secretary.

**SURVEYOR-GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
Santa Fe, New Mexico, July 14, 1855.**

I certify the foregoing to be a translation of Document E, in Claim No. 3, to the Bosque de los Pinoas.

DAVID V. WHITING, *Translator.*

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PLAINTIFF'S EXHIBIT F.

The citizen, Jose Antonio Chavez, constitutional justice (alcalde) of Isleta, ex political chief of this Territory, &c., &c.

In the town of San Andres de los Padillas, on the 27th of December, 1839, before me, the aforesaid constitutional justice (alcalde) of Isleta, and those in my attendance, personally appeared Messrs. Don Juan Nepomoceno Gutierrez and Dona Apolonia Gutierrez, as agent for Dona Maria Alvarez del Castillo, and the first parties stated that their father, Don Lorenzo Gutierrez, had sold to Don Francisco Xavier Chavez, deceased, the portion to which they were entitled to in the grove called "de Los Pinos," as well as the portion to which Dona Lorenzo Gutierrez was entitled to; that said portions were delivered to said Don Francisco by their father aforesaid, and that the said Don Francisco remained in the quiet, peaceable possession of the property during the lifetime of their father without having any claim set up against him, and that they do not know if any document was executed in his favor; and as the said document does not appear they give him the present certificate in order that no claim may be set up against his possession by their children, heirs, or successors, and at the request of Don Mariano Chavez they give this certificate, which they sign with me and my attending witnesses on this paper, there being none of the proper seal, on the day, month, and year aforesaid, *yo* which I certify.

(Signed)	JOSE ANTONIO CHAVEZ.	[RUBRIC.]
(Signed)	JUAN NEPO GUTIERREZ.	[RUBRIC.]
Attending :		
(Signed)	IGNACIO ORTIZ.	[RUBRIC.]
	<i>For my mother, Dona Palomia Gutierrez.</i>	
Attending :		
(Signed)	JUAN OTERO.	[RUBRIC.]
(Signed)	JUAQUIN BAYAR.	[RUBRIC.]

**SURVEYOR-GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
Santa Fe, N. M., June 11th, 1855.**

I certify the within to be a translation of Document K, in Claim No. 3, to the "Bosque de los Pinoas."

DAVID V. WHITING, *Translator.*

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PLAINTIFF'S EXHIBIT G.

Dn. Lorenzo Gutierrez, capitán de milicias, comandante en campaña, alcalde de segunda elección de la Biya de Alburquerque, su juridicion y frontera, &c.

Por quanto se me han presentado los yjos principales del pueblo de Sn. Agustin de la Ysleta, en solicitu' de documento de escritura sovre las tierras que del lindero de dicho pueblo al de los Lentes, de sur á norte, se le vendieron á dicho pueblo por mi hantesesor, Dn. Mariano de la Peña, de la casa de mi manexo de Sra. mi Madre Dña. Josefa Polonia Baca, de culla venta para la costancia en poder del alcalde de primera elecion desta dicha juridicion, Dn. Manl. de Artega, el que por hayarse de grave enfermeda no se le puede esixir el expresado documento hasta su mexoria o fallecimiento, y que siendo regular lo tenga depositado en el archivo que há su cargo está, para escusar las rrepetidas ystancias de los expresados yjos, y costándome ser sierta la compra les doi el presente, que firmo para rresguardo, firmándolo pa. la devida costancia con dos de mi hasistencia, en este de Pajarito, á tres dias del mes de mayo de mil ochosientos ocho años.

LORENZO GUTIERREZ. [RÚBRICA.]

Asa.: AGUSTIN DE LA PEÑA. [RÚBRICA.]

Asa.: MANL. RUVI. [RÚBRICA.]

[Translation.]

Don Lorenzo Gutierrez, captain of militia, commandant in the field, alcalde of second election of the town of Albuquerque, its jurisdiction and frontier, etc., etc.

Whereas the principal men of the pueblo of San Agustin de la Isleta have come before me asking for a deed of conveyance for the lands which, from the boundary of the said pueblo to that of Los Lentes, from south to north, were sold to the said pueblo by my predecessor, Don Mariano de la Peña, from the estate of my mother, Doña Josefa Polonia Baca, of which I am the administrator, of which sale the documentary evidence is in the possession of the alcalde of first election of this said jurisdiction, Don Manuél de Artega, from whom, he being seriously ill, it can not be obtained until he gets better or dies, and it being probable that it is deposited in the archives under his charge, in order to avoid the repeated petitions of the said men, and knowing that the purchase was really made, I give them the present, which I sign for their security, signing it in order that it may so duly appear, with two assisting witnesses, in this place of Pajarito, on the third day of the month of May of the year one thousand eight hundred and eight.

LORENZO GUTIERRES. [RÚBRICA.]

Assisting witness:

AGUSTIN DE LA PEÑA. [RÚBRICA.]

Assisting witness:

MANL. RUVI. [RÚBRICA.]

YSLETA, y Junio de 1826.

Sr. Gr. Dn. ANTO. NARVONA,

Sor., en virtud de havérseme presentado los hombres mallores y prinsipales deste pueblo de Sr. S. Agustin de la Ysleta, sobre qe. Dn. Anto.

José Padilla está fabricando en un sitio de tierra qu. el Pueblo compró, á la casa de Dn. Clemente Gutierrez, como consta por un documento qe. halla en ntro. poder, otorgado por Dn. Lorenzo Gutierrez, dha. venta fue echa por Dn. Mariano de la Peña; en dha. compra no huvo mas comprendidos qe. alludaron con su dinero, qe. fueron Blas Lente, Nicolas Olgín, y Pedro Lente; este dho. Anto. José Padilla no contribulló con nada, solo se funda acreedor porque para completar la cantidad del dinero qe. teníamos de entregar por dha. tierra, vendimos en la otra vanda, tambien comprada á unos Señores Padilla, como consta por la escritura qe. para en ntro. poder; y disen los viejos deste pueblo qe. es cierto qe. en esta compra contribulló con un tanto, Roque Lusero, abuelo de la muger de dho. Anto. José Padilla, y qe. no se le niega qe. sea acreedor á dho. sitio, pero qe. en donde le toque como comvidado; y qe. si en esta tierra desta vanda, presenta algun documento qe. diga qe. alludó con algo, tambien se le dará como se le dió á Blas Lente, á Nicolas Olgín, y á Pedro Lente, pero qe. adonde el se a puesto, qu. es casi al medio de la tierra, de ningun modo se puede, pues dha. tierra se compró para abrebaderos de ntros. animales, y regularmente han bajan bacas, buelles, y cavallada á abrebar, y presisamente an de dañar, de donde vienen las riñas y cuestiones, y para evitar esto no queremos qe. se nos ponga ay, pues si se considera acreedor por haver vendido en donde el tiene aucion por parte de su muger, qe. aun quedó mucha tierra del sitio del otra banda de donde darle lo qe. le corresponda, pues no se le niega el derecho.

En virtud de todo lo expuesto, pasamos á la fuente de la prudencia de V. S. con la venia de ntro. ale. constitucional, y rendidamente suplicamos se sirva darnos el consuelo de atendernos, segun llevamos dicho, con lo que V. S. juzgue ser de justicia con lo que resolviremos mersed, y juremos no ser de malisia esta ntra. petision, si lo nesesario &.

MANUEL LUSERO. [A CROSS.]
Ale. de Barrio.

[Translation.]

To the Governor, Don ANTONIO NARBONA.

ISLETA, June 14, 1826.

SIR: The principal men of this pueblo of San Augustine of Isleta have come before me to say that Don Antonio José Padilla is building on a tract of land which the pueblo purchased from the house of Don Clemente Gutierrez, as will appear from a document which is in our possession executed by Don Lorenzo Gutierrez, the said sale having been made by Don Mariano de la Peña, in which purchase there were included only those who aided with their money, and these were Blas Lente, Nicolas Olgín, and Pedro Lente. This said Antonio José Padilla did not contribute anything, and he bases his claim solely on the fact that in order to complete the sum of money which we had to pay for the land we sold on the other side of the river [land] also purchased from certain Messrs. Padilla, a' appears by the title paper which we hold, and the old men of the pueblo say that it is true that for this purchase a certain amount was contributed by Roque Lusero, grandfather of the wife of the said Antonio José Padilla, and it is not denied that he has an interest in the said tract,

but at such a point as it may be proper for him as one invited, and if in the tract on this side he presents any document that will show that he assisted with anything there will also be given to him as was given to Blas Lente, to Nicolas Olgín, and to Pedro Lente; but where he has located, which is almost in the middle of the land, can not be allowed by any means, since the said land was purchased for watering places for our animals, and there will pass there cows, oxen, and horses, and they will certainly cause damage, whence will arise quarrels and questions, and to avoid these we do not want him to locate there, and if he thinks that he has an interest because of a sale having been made in the part where he has a share on account of the interest of his wife, there was a great deal left of the tract on the other side from which there may be given him that to which he may be entitled, as his right is not denied.

In virtue of all of that which we have set forth we apply to the fountain of the prudence of your honor with the permission of our constitutional alcalde, and we humbly pray that you will deign to give us the consolation of your attention in accordance with that which we have said, with your honor's decision as to what may be just in the matter in which we will receive grace, and we swear, etc.

MANUEL LUSERO. [A CROSS.]
Alcalde of the Ward.

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PLAINTIFF'S EXHIBIT I.

Don José Antonio Chaves Duran, the. de las milicias urbanas y Alee. Mayor del Pueblo de la Ysleta y sus partidos, &a.:

Por quanto se me han presentado los hijos principales del Pueblo de Sor. Sn. Agustín de la Ysleta en solisitud de que se les midiera su sitio del lado del sur la que lindan con Los Lentes, y pasé á dho. sitio y mandé llamar á los principales de Los Lentes, y juntos los hijos del Pueblo de la Ysleta y Los Lentes, y medi dho. sitio y entregó á los del Pueblo lo que justamente era sullo, y á Los Lentes lo mismo, y quedaron vnos y otros muy contentos y conformes con la medida que se hizo y que en ningun tiempo no pondrán alegato ni vnos ni otros por estar echo el reparto fiel y legal, y que si acaso alguno pusiere algun alegato, que no sea huido en juicio, y mandé pucieran sus mojoneras pa. perpetua memoria y firmé este documento para la devida constancia, con dos testigos de mi asistencia en este Pueblo de la Ysleta, á dos de junio de mil ochosientos beinydos años, y doy fe.

JOSÉ ANTO. CHAVS. DURAN. [RÚBRICA.]

Assaa.:

MANL. YTURRIETA. [A CROSS.]

SSaa.

PEDRO YTURVIETA. [RÚBRICA.]

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PLAINTIFF'S EXHIBIT I.

[Translation.]

Don José Antonio Chaves Duran, lieutenant of urban militia and alcalde mayor of the Pueblo de la Isleta and its districts, etc., etc.:

Whereas the principal men of the Pueblo de San Agustín de la Isleta have come before me asking that I measure for them their tract on the

south side, which lines with Los Lentes, and I proceeded to the said tract, and I ordered the principals of Los Lentes to appear, and the men of the Pueblo de la Isleta and of Los Lentes being assembled, I measured the said tract and I deliver' to those of the pueblo that which was justly theirs, and to Los Lentes the same, and both were well contented and satisfied with the measure which had been made; and they shall not at any time, neither the one nor the other, bring any suit, for the reason that the partition was made faithfully and legally, and in case anyone should bring suit let him not be heard in court; and I ordered that they set up their landmarks in perpetual evidence, and I signed this document in order that it might so duly appear, with two assisting witnesses, in this Pueblo de la Isleta, on the second of June, in the year one thousand eight hundred and twenty-two, and I certify.

F. JOSE ANTO. CHAVES DURAN. [RUBRIC.]

Assisting witness:

MANL. YTURRIETA. [A CROSS.]

Assisting witness:

PEDRO YTURVIETA. [RUBRIC.]

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PLAINTIFF'S EXHIBIT J.

[Original Title-Papers.]

Mrzd. del sitio de San Clemente, echo á Ana de Sandoval y Manzanares. Sor. Gov. y Ctypn. Gel.:

Ana de Sandoval y Manzanares, vecina de este reino de la Nueva Mexico, puesta á las plantas de Vrsa, paresco en la mas bastante forma de derecho que aylla lugar y á el mio combenga y digo, señor, que, por quanto el Marques de la Nava de Brasinos, que Dios haya en gloria, gobernador y capitán general que fué deste dho. reino, nos conduxo á él, año de noventa y dos, para su poblason, en culla atencion, y en nombre del rey mi Señor (Dios le gue.) nos prometió de dar á cada uno de los becinos naturales deste dicho reino, que entraron á la poblason y pasificación del, de darnos los sitios que de tierras y de labores y criansas de ganados y caballadas que dejamos perdidas el año de ochenta por su inco'nita sublección, en culla virtud de habernos restituido á dicho reino, experimentando en él innumerables trabajos, y realmente allarme pobre y viuda de Blas de la Candelaria, que Dios aya lla, y cargada de hijos, motivo digno de suplicar á Vsia. se sirba de darme, en nombre de su Magestad (Dios le gue.) un sitio de tierras titulado San Clemente, el cual hube de erencia de mi padre, que Dios aylla, Mateo de Sandoval y Manzanares, que me dexó la merced de dho. rancho con linderos que son los siguientes: Por la parte del norte las tierras de Cristobal de Tapia, y por la parte del sur, con tierras y paderes de la casa de Tome Dominques; por la parte del oriente con el rio del Norte, por ~~del~~ del poniente el rio Puerco, lo cual á Veia, pido y suplico, con el mas profundo rendimiento, se ha de servir de mandar á la persona que mas fuere de su agrado, me dé posecion real de dho. sitio, con la nueva merced del para poder yo y mis hijos, nietos, erederos y sucesores, usar de dicho sitio, y gosarlo libremente; y juro en devida forma lo nesesario, etc.

ANA DE SANDOVAL Y MANZANARES.

PRESEN^N.

En la villa de Santa Fe, en trese dias del mes de julio del año de mil setecientos y dies y seis, ante mi, el Capn. Don Phelix Martinez, que lo soi vitalicio desta real presidio de la villa de Santa Fee, govr. y capitán, genl. de este reino, y castellano de sus fuersas y precidios, por su Magd., la presento la contenida y por mi vista la hube por presentada en cuanto á lugar en dro. y atendiendo á lo justo de su pedimento y ser segun su relacion dhas. tierras de su padre y haberlas despoblado por la sublebacion del año de ochenta.

AUTO.

Le concedo la merced que pide en nombre de su Magd. por la susodicha, sus hijos, herederos y subsesores, para que la gose y posea entendiéndose, sin perjuicio de tercero que mejor dro. tenga, y ha de poblarse dentro de seis meses por atender á la mucha ocupacion del tiempo, y mando al Cpn. Antonio Gutierrez le dé la real posesion en nombre de Su Magd., con todas las ceremonias de dro., y este auto le sirva de bastante titulo; y luego que dé dha. posesion que se debuelba este original á este archivo para que se saque testimonio; y para que conste lo firmé con mi secretario de gobn. y guerra en dicho dia ut supra.

PHELIX MARTINEZ.

Ante mi,

MIGUEL THENORIO DE ALVA,
Serio. de Govn. y Guerra.

En esta villa de San Felipe de Alburquerque, en beinte y tres dias del mes de julio de mil setecientos y dies y seis dias, io, el Capn. Antonio Gutierrez, alcalde mayor y capitán á guerra de la dicha villa y su jurisdicion, en et cumplimiento del auto arriba probeido por el señor gor. y capitán general Dn. Felix Martinez, fuí al dho. sitio y tierras que dho. auto me manda, y en él, dí la real posesion en nombre de su Magd., Dios le ge., á Felix de la Candelaria, en cabesa de su madre, Ana de Manzanares y Sandoval, en forma de derecho, con las ceremonias acostumbradas que él derecho dispone, pasiandolo de la mano; quien arancó sacate, tiró piedras y gritó, y se la dí por los mismos linderos que señala en su peticion, como así mismo corren sus linderos: Por el oriente con el rio del Norte, por el poniente con el rio Puerco, por el sur con la casa de Tome Dominques, por el norte con una ruina que está poco mas arriba del po. de San Clemente; i en los dichos linderos mandé poner mojoneras, habiéndolos primero reconocido; y lo firmé con dos testigos de mi asistencia, y para que así conste lo firmé yo, dho. alcalde mayor, capitán á guerra, con dos testigos de mi asistencia en dicho dia, mes y año, ut supra.

67 Ante mi como juez receptor.

ANTONIO GUTIERRES.

Testigo de asistencia:

ANTON. DE CHABES.

Testigo de asistencia:

BALTAZAR ROMERO.

[Translation of title papers.]

*Grant of the tract of San Clemente made to Ana de Sandoval y Manzanares.**To the governor and captaen-general:*

I, Ana de Sandoval y Manzanares, a resident of this Province of New Mexieo, placed at the feet of your excellency, appear in due legal form and state, sir, that when the Marquis de la Navade Brasinas, whom may God have in glory, who was governor and captain-general of the said province, brought us hither in the year ninety-two for its settlement, in the view of which, and in the name of my lord, the King, God preserve him, promise to give to each one of the native citizens of this province who might come to settle and pacify the same, the tract of land and fiel' is and stock raising that we abandoned in the year eighty on account of the powerful insurrection. By virtue of having been restored to said province, suf'ering thereby a great many hardships, and finding myself really poor and a widow of Blas de la Candelaria, deceased, and burdened with children, a good reason to sup'litate your excellency that you grant me, in the name of His Majesty, whom may God preserve, a tract of land called San Clemente, which I inherited from my father, deceased, Mateo de Sandoval y Manzanares, who left me the grant of San Clemente, said rancho, woth its boundaries, as follows: On the northern part with the lands of Cristobal de Tapia, and on the southern part with the lands and walls of the house of Tome Domingues, on the eastern part with the Del Norte River, on the part of the west with the Rio Puerco; which I ask of your excellency, and pray with the profoundest respect, that you may send one person whom it may be your pleasure, that the same may place me in the royal possession of said tract, together with the new grant, that I, my children, grandchildren, and heirs, and succes'sors may use and enjoy the same; and I declare in due form whatever may be neces'ary.

ANA DE SANDONAL Y MANZANARES.

PRESENTATION.

In the city of Santa Fe, on the thirteenth day of the month of July, in the year seventeen hundred and sixteen, before me, Don Phelix Martinez, captain for life of this royal garrison of the city of Santa Fe, governor and captain-general of this province and castellan of its forces and garrison for His Majesty, the petition was presented by the petitioner. I treated the same as before me in due legal form, and in view of the justness of her petition and said lands belonging to her father, ac'ording to her petition, and the same having been abandoned by him, on account of the insurrection of the year eihfty.

BEQUEATH.

I concede to her the grant she asks in the name of His Majesty, to the aforesaid, her children, heirs, and successors, that she may enjoy the same; provided that it be without injury to any third party who may have a better right, and she must settle the said grant within six months,

on account of the many occupations of the time, and I hereby command Captain Antonio Gutierrez to place her in royal possession in the name of His Majesty, in all due form legal, and that this decree shall be for her a sufficient title; and as soon as said possession is given her, that this original may be returned to this office that duplicate may be made; and that it may so appear, I have signed with my secretary of government and war on said day as above.

PHELIX MARTINES.

Before me,

MIGUEL TEENORIO DE ALVA,
Secretary of Government and War.

70 In this city of San Felipe de Albuquerque, on the twenty-third day of the month of July, seventeen hundred and sixteen, I, Captain Antonio Gutierrez, chief alcalde and war captain of the said city and its jurisdiction, in compliance to the decree above named by his excellency the governor and captain-general, Don Phelix Martines, I went to the said tract and land that in said decree I am commanded, and there I gave royal possession, in the name of His Majesty, whom may God preserve, to Felix de la Candelaria, in the name of his mother, Ana de Manzanares y Sandoval, in legal form, with the accustomed ceremonies that the law prescribes, leading him by the hand, and he tore up grass, threw stones, and shouted, and I now give said possession with the boundaries that are designated in her petition, and therefore the same are its boundaries: On the east by the Rio del Norte, on the west by the Rio Puerco, on the south by the house of Tome Domingues, and on the north by a ruin that is a little above the pueblo of San Clemente; and in the said boundaries I ordered monuds to be made, having first examined them, and I signed it with two attending witnesses; and that it may so appear I have signed, I, the said chief and war captain, with two attendin' witnesses, on the said day, month, and year as above.

ANTONIO GUTIERRES.

Attending witness:

ANTONIO CHABES.

Attending witness:

BALTAZAR ROMERO.

71 PLAINTIFF'S EXHIBIT K.—DECREE IN ANA DE MANZANAREZ CASE.

In the Court of Private Land Claims, sitting in the Territory of New Mexico.

J. FRANCISCO CHAVES AND SOLOMON LUNA }
vs. } No. 64.
UNITED STATES. }

This cause having heretofore come on for hearing upon the pleadings and exhibits on file, and upon proofs taken in open court, as well on behalf of defendants as on behalf of petitioners, full legal proof having been taken and counsel having been heard for said parties, and the petition

herein having been sustained by satisfactory proofs, the court, being now sufficiently advised in the premises, makes the following findings of fact:

1. That on the thirteenth day of July, in the year 1716, Ana de Sandoval y Manzanares, the widow of Blas de la Candelaria, presented to the then governor and captain-general of New Mexico, Don Phelix Martinez, her petition, praying that he grant her a piece of land called San Clemente, and setting forth the boundaries of said land as being on the north the lands of Christobal de Tapia, on the south the lands and walls of the house of Tome Dominguez, on the east the Rio del Norte, and on the west the Rio Puerco; that thereupon the said governor and captain-general made to her the grant which she asked, and com'anded the Captain Antonio Gutierrez to place her in possession with all the ceremonies of law; and that on the 23rd day of July, 1716, the said Captain Antonio Gutierrez, in pursuance of the com'and aforesaid of the governor, delivered possession of said land to Felix de la Candelaria as the representative of his mother, the said Ana de Sandoval y Manzanares, with the boundaries designated in her said petition, specifying the same to be, on the east the Rio del Norte, on the west the Rio Puerco, on the south the house of Tome Dominguez, and on the north a ruin, which is a little above the pueblo of San Clemente.

72 2. That the Rio del Norte, which constitutes the eastern boundary of said land, did not at the time of the making of said grant run in the same channel where it now does, but at some distance to the eastward of its present bed, and that the old river bed is the eastern boundary of said land, a portion or portions thereof lying east of the present river.

3. That the land included in said grant has been in the possession of said grantee, her heirs and legal representatives, continuo'ly from the year 1716 down to the present time, and that at least one of the petitioners in this cause, Solomon Luna, has suc'eeded in part to the rights of said original grantee, by inheritance for an ancestor, Domingo de Luna, who purchased portions of said land from heirs of the original grantee prior to the year 1750.

The court finds, as matter of law, that by reason of the facts hereinbefore set forth, a title to all of the land included within the boundaries aforesaid was vested in the said Ana de Sandoval y Manzanares, which title was complete and perfect at the date when the United States acquired soverei'nty over the country now embraced within the Territory of New Mexico, within which said grant is situated, and that the petitioners herein are entitled to have the same confirmed to the heirs and legal representatives of the said Ana de Sandoval y Manzanares.

The court hereby specifies that the said land is located within the county of Valencia, in the Territory of New Mexico; that it is bounded on the north by an east and west line running through the point where the public road from Los Lentes to Ysleta crosses a lateral irrigating ditch running in an easterly direction from the main ditch or Acequia

73 Madre, which lies to the west of said road, which points is about three-quarters of a mile north of the chapel or church at Los Lentes, and a short distance above a road which branches off from said first-mentioned road and runs in a westerly direction toward the hills; on the east by the old river bed of the Rio Grande del Norte; on

the south by the northern boundary line of the Nicolas Duran de Chaves grant, as heretofore fixed by a decree of this court and as shown by the survey of said grant made in pursuance of said decree and approved by this court on the 29th day of May, A. D. 1895, and on the west by the Rio Puerco, and that the estimated area of said land is about thirty-seven thousand acres.

It is therefore ordered and adjudged and decreed by the court that the claim for the land embraced within said grant as hereinbefore described and specified be, and the same hereby is, confirmed to the heirs and legal representatives of Ana de Sandoval y Manzanares, but this confirmation does not confer any right or title to any gold, silver, or quicksilver mines or minerals of the same.

It is declared by the court that the confirmation in this decree contained in is made under Title XII of Book IV of the Recopilacion de Leyes de los Reynos de las Indias, the royal decree of the King of Spain of October 15, 1754, and the law of nations.

September 4, 1896.

HENRY C. SLUSS,
Associate Justice.

(Here follows map, marked p. 74.)

75 And be it further remembered that thereafter, to wit, on the 2nd day of June, A. D. 1897, the court rendered its decision in the words and figures following, to wit:

76 In the Court of Private Land Claims, sitting at Santa Fe, New Mexico.

J. FRANCISCO CHAVEZ AND THE PUEBLO OF ISLETA)
vs.) No. 274.
THE UNITED STATES.)

J. FRANCISCO CHAVEZ AND THE PUEBLO OF ISLETA)
vs.) No. 275.
THE UNITED STATES.)

These two cases having heretofore come on for hearing together upon the pleadings and exhibits on file and upon the proofs taken in open court upon behalf of the petitioners, and counsel having been heard as well on behalf of defendant as on behalf of the petitioners, the court, being now sufficiently advised in the premises, finds that the petitions, and all of the material allegations of fact therein contained, have been sustained by satisfactory proofs, and the court makes the following special findings of facts:

1. On November 5, 1716, the Spanish governor of New Mexico made to Antonio Gutierrez a grant of a tract of land described as bounded on the north by an arroyo with some cottonwood trees that comes down from the hills, on the south by the Pueblo of San Clemente, on the east the Rio del Norte, on the west the hills of the Puerco River, which boundary calls are well-known objects, except that on the north, of the location of which there is no evidence.

2. At some time prior to the year 1734 a grant was made to Joaquin Sedillo, and he had also acquired and had in possession some additional land, the whole being bounded on the north by the line of the

league of the Pueblo of Isleta, on the south by a twin alamo, sometimes called the Alamo de la Culebra, which boundary on the south was identical with the northern boundary of the above-mentioned grant to Antonio Gutierrez; on the east by the Rio del Norte, and on the west by the ceja of the Rio Puerco, these boundary calls being well-known objects, except that on the south, of the location of which there is no evidence.

3. In the year 1785 one Clemente Gutierrez died in possession of, and owning, the whole of the land of the said Antonio Gutierrez and Joaquin Sedillo, which was listed in the inventory of his estate made by his widow as "the rancho commonly called San Clemente, Barrancas, and Los Pinos."

4. At some time prior to the 3rd of May, 1808, the pueblo of Isleta had acquired the title of Clemente Gutierrez to all of the said land lying on the west side of the present river bed of the Rio Grande del Norte and had entered into possession of the same and has held such possession down to the present time, the extent of the said land so acquired by said pueblo being from the boundary of the grant of the pueblo to the boundary of the lands of Los Lentes.

5. By a number of different deeds from the children and heirs of Clemente Gutierrez, beginning in the year 1819, Francisco Xavier Chavez acquired all of the Gutierrez title to so much of the said lands as lie to the east of the present river bed of the Rio Grande del Norte, which portion of said lands is known as the Bosque de los Pinos, the northern boundary thereof being the line of the grant to the pueblo of Isleta, and the southern boundary being the line of the lands of Los Lentes.

6. The northern boundary of the said lands of Los Lentes has been ascertained and fixed by this court in its decree of confirmation in the case of J. Francisco Chavez and Solomon Luna vs. The United States, which is numbered 64 on the docket of this court as being the northern boundary of the land the claim for which was confirmed in said decree.

7. After the making of the original grants the Rio Grande del Norte formed a new channel west of what was subsequently known as the Bosque de los Pinos, leaving its former river bed at a considerable distance east of the new one, and that portion of the land in question lying between the old and new river beds has since been known as the Bosque de los Pinos and is that which was acquired by Francisco Xavier Chavez.

8. The petitioner, J. Francisco Chavez, is a grandson of the said Francisco Xavier Chavez and has inherited his title to the Bosque de los Pinos, which has been continuously in the possession of the said Francisco Xavier Chavez and his descendants since his purchase.

9. Clemente Gutierrez, and those deriving title under him, have been in the possession of the said land from some time prior to the distribution of his estate in 1785 down to the present time, at all times exercising dominion over it.

The court therefore finds, as matter of law, that the title held by Francisco Xavier Chavez and his descendants to that portion of the said lands lying between the old and present river beds of the Rio Grande del Norte, commonly known as the Bosque de los Pinos, and the title

held by the pueblo of Isleta to that portion of the said lands lying west of the present river bed of the Rio Grande del Norte, were complete and perfect titles at the date when the United States acquired sovereignty over the country now embraced within the Territory of New Mexico and within which said lands are situate; and that the said J. Francisco Chavez and the pueblo of Isleta are entitled to a decree of confirmation of their respective claims; and that, under the special circumstances of the case, but one decree of confirmation ought to 79 be entered for the whole of the land lying between the grant to the pueblo of Isleta and the northern line of the grant to Ana de Sandoval y Manzanares, and that the said two cases are to be taken and considered as consolidated for the purpose of such confirmation and decree.

And it is declared by the court that the confirmation in this decree contained is made under Title XII of Book IV of the *the Recopilacion de Leyes de los Reynos de las Indias*, the Spanish law of prescription, and the law of nations.

It is therefore ordered, adjudged, and decreed by the court that the claim for so much of the said land as lies between the old and present river beds of the Rio Grande del Norte, commonly known as the Bosque de los Pinos, be, and the same hereby is, confirmed to the said J. Francisco Chavez; and that so much of the said land as lies to the west of the present river bed of the Rio Grande del Norte be, and the same hereby is, confirmed to the said pueblo of Isleta; but this confirmation does not confer any right or title to any gold, silver, quicksilver mines, or minerals of the same.

The court declares and specifies that the said land, the claims for which are hereby confirmed, is situated in the county of Valencia, in the Territory of New Mexico, and is bounded on the north by the southern line of the pueblo grant to the pueblo of Isleta, as surveyed under the confirmation of the same by the Congress of the United States; on the east by the old river bed of the Rio Grande del Norte; on the south by the north line of the grant to Ana de Sandoval y Manzanares as established by the decree of this court in the case of J. Francisco Chavez and Solomon Luna vs. United States, numbered 64 on the docket of this court; and on the west by the ceja (being the divide between the Rio Puerco and the Rio del Norte) of the Rio Puerco; and that the area of the said land is estimated to be between thirty and thirty-five thousand acres.

80

In the Court of Private Land Claims.

J. FRANCISCO CHAVES }
 vs. } 274.
 THE UNITED STATES. }

OPINION.

The questions presented for consideration in this case are, first, as to the boundaries of the land granted, and, second, whether the plaintiff, J. Francisco Chavez, or his copetitioner, the pueblo of Isleta, is so connected with the title as to authorize this proceeding. The facts are as follows: On November 5, 1716, the Spanish governor of New Mexico

made to Captain Antonio Gutierrez a grant of a tract of land described as bounded "on the north by an arroyo with some cottonwood trees that comes down from the hills; on the south by the pueblo of San Clemente; on the east, the Rio del Norte; on the west, the hills of the Puerco River." All these boundary calls are well-known objects except that on the north, and of the location of the latter there is no evidence. In 1785, Clemente Gutierrez having died, in a proceeding to partition his estate an inventory of his estate was made by his widow, who gave her name as Maria Apolonia Baca, and among other tracts of land listed was one described as "the rancho commonly called San Clemente, Barranca, and Los Pinos." San Clemente was a well-known abandoned Indian pueblo. Barranca was a well-known bluff on the Rio Grande River, which formed the south boundary of the pueblo grant to the Indians of the pueblo of Isleta. Los Pinos was a well-known grove of pines along the Rio Grande River, between the other named points. In the partition proceeding referred to this tract of land was distributed in individual parts among the widow and children of Clemente Gutierrez. On May 3rd, 1808¹, Lorenzo Gutierrez delivered to the pueblo of Isleta a statement to the effect that he was the administrator of the estate of his mother, Josefa Polonia Baca, and that his predecessor, Mariano de la Pena, had conveyed to the Indians of the pueblo of Isleta the lands of his mother from the boundary of the pueblo to that of Los Lentes, and that the deed was in the possession of the alcalde of the first district of

Albuquerque.

81 Lorenzo Gutierrez was the son of Clemente Gutierrez, and Mariano de la Pena was the husband of the daughter of Clemente Gutierrez. The Los Lentes were a settlement having a tract of land the north boundary of which was a short distance north of the abandoned San Clemente pueblo. After the making the grant to Antonio Gutierrez the Rio Grande formed a new channel west of the grove of pines for the entire distance from the Barranca to San Clemente, and the tract lying between the old and new channels became known as Bosque de los Pinos.

In the years 1819 and 1821, by different deeds, a number of the children and heirs of Clemente Gutierrez conveyed the Bosque de los Pinos to Francisco Xavier Chaves, giving the line of the pueblo grant as the north boundary, and the line of Los Lentes as the south boundary. The plaintiff J. Francisco Chaves is a descendant and inherits from Francisco Xavier Chaves. In the year 1822 the alcalde of the district, in a proceeding for that purpose, established the boundary line between the tract in question as the lands of the pueblo of Isleta, and the lands of Los Lentes. In 1826 the pueblo of Isleta made complaint to the governor of the Territory against a man who had made an unauthorized settlement in the tract in which they asserted their ownership, and that they had purchased the tract from "the house of Gutierrez." The Bosque de los Pinos has been in the possession of Francisco Xavier Chaves and his descendants since his purchase, and the pueblo of Isleta has been in possession of the remainder of the tract for a time beyond the memory of man. From these circumstances we think it is a fair inference that Clemente Gutierrez was the descendant and heir of Antonio Gutierrez. There is no reason to say that he was not. It is more probable that he inherited the title from Antonio Gutierrez than that he was a stranger to

the title. Clemente Gutierrez and those deriving title under him were in the possession of the land from a time years prior to the distribution of the estate in 1785, and have continued in that possession from that time to the present, at all times exercising dominion over it, claiming ownership under the inheritance from Clemente Gutierrez. Under Spanish and Mexican law, as we think, this was sufficient to establish ownership.

82 By law 1, book 4, title 15, of the Recopilacion, it was provided that a title by prescription could be acquired, as against the Crown, of cities, towns, and villages, &c., by a possession of forty years. (See *New Orleans vs. United States*, 10 Peters, 724.) The Recopilacion and the Partidas were the fundamental laws of Spain (10 Peters, 724). By laws 9, 14, and 15, title 29, Partida 3, it was provided that an inheritance was such a "just title" as was requisite to become the basis of title by prescription. By law 14, title 12, book 4, of the Recopilacion (2 White, 52), the right to acquire title by prescription against the Crown was recognized as applicable to public lands. The provisions and principles of this law were recognized and continued in force as to public lands by the 2nd article of the royal cedula of 1754. The fundamental principles of Spanish law as found in the Recopilacion and in the Partidas were not set aside by the independence of Mexico, but continued to be regarded and respected as the law of that country after independence. From a book entitled *Collection of the Laws and Decrees of the Cortes of Spain, reputed to be in force in the Republic of the United States of Mexico* (Mexico, 1829, press of Galvan), we quote:

"The independence of Mexico being fortunately realized by the occupation of its capital on the 27th of September, 1821, and the destruction of the viceroyal government, although the bonds of dependence with Spain were broken forever, the laws that regulated the duties and rights of those who composed this new society could not and ought not remain without force, for, not being possible to renew them except after the lapse of time and by competent authorities, the sudden abolishment of all of them would be the same as the establishment of absolute anarchy when order was most needed. Thus it is that, with exception of those laws that conflict directly with the memorable plan of Iguala and the new order of things it created, all others that have emanated from the King of Spain and from the sovereign authority recognized until that day, were observed and respected, lawsuits were decided by them, justice was administered under them, and Mexicans adjusted their social life to their tenor. From this it resulted that the Spanish codes, which

83 it has not yet been possible to substitute by other new ones, are eagerly sought for by the judges, professors, and even by plain citizens, in as much as they find in them the guide for their actions, the guarantee of their reciprocal rights, and the rule for their procedure."

We think, therefore, that forty years' possession proceeding upon a title by inheritance is sufficient evidence of a perfect title to the whole tract so possessed as against both Spain and Mexico, and sufficient to show a connection of such possession with the original grant.

In the recent case of *United States vs. Chaves*, 159 U. S., 451, it is said: "We do not wish to be understood as undervaluing the fact of a possession so long and uninterrupted as disclosed in this case. Without

going at length into the subject, it may be safely said that by the weight of authority, as well as by preponderance of opinion, it is the general rule of American law that a grant will be presumed upon proof of an adverse and uninterrupted possession for twenty years, and that such rule will be applied as *presumptio juris et de jure* wherever by possibility a right may be acquired in any manner known to the law. 1 Greenleaf Ev., 12th ed., sec. 17; *Riehard vs. Williams*, 7 Wheat., 59, 109; *Coolidge vs. Learned*, 8 Pick., 503. Nothing, it is true, can be claimed by prescription which owes its origin to, and can only be had by, matter of record; but lapse of time accompanied by acts done, or other circumstances, may warrant the jury in presuming a grant or title by record. Thus, also, though lapse of time does not of itself furnish a conclusive *hac* to the title of the sovereign, agreeably to the maxim *nullum tempus occurrit regi*, yet if the adverse claim could have had a legal commencement juries are advised or instructed to presume such commencement, after many years of uninterrupted possession or enjoyment. Accordingly, royal grants have been thus found by the jury after an indefinitely long continued peaceful enjoyment, accompanied by the usual acts of ownership. 1 Greenl. Ev., sec. 45. The principle on which this doctrine rests is one of general jurisprudence, and is recognized in the Roman law and the codes founded thereon, Best's Principles of Evidence, sec. 366, and was therefore a feature of the Mexican law at the time of the cession."

84 We are justified in supposing that this language was intended for our guidance, and we think it is aptly applicable to the facts of this case.

On the whole case, we think the evidence is sufficient to show a title such as is entitled to be confirmed as a perfect title.

There will be a confirmation of the tract known as *Bosque de los Pinos* to J. Francisco Chaves, and the tract claimed by the pueblo of Isleta will be confirmed to the pueblo of Isleta.

The decree should definitely describe the boundaries of each tract, the north boundary being at the south line of the pueblo grant to the pueblo of Isleta as surveyed under the confirmation of the same by Congress.

(Signed)

HENRY C. SLUSS,
Associate Justice.

(Indorsed:) 274. J. Francisco Chaves vs. United States. Opinion. Filed in the office of the clerk of the Court of Private Land Claims June 2d, 1897. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

85 DISSENTING OPINION OF MR. JUSTICE MURRAY.

In the Court of Private Land Claims.

J. FRANCISCO CHAVES AND THE }
Pueblo of Isleta }
vs. } No. 274. *Bosque de los Pinos.*
UNITED STATES. }

The claims in this case were filed under the provision of section 8 of the act of March 3rd, 1891, which provides for the confirmation of titles

to land derived from the Spanish or Mexican Governments that was complete and perfect at the date when the United States acquired sovereignty therein, etc.

The grant which is the basis of the claim was made by the Spanish Government on the 5th day of November, 1716, to one Antonio Gutierrez. The grant is genuine, but was not confirmed as required by article 5 of the royal instruction of October 15, 1754.

Hall's Mexican Law, page 28.

It is claimed by counsel for petitioners:

That the land originally granted to Antonio Gutierrez was transferred by him to Diego Padilla, and that Diego Padilla conveyed to Diego Borrego, who conveyed the same to Nicolas de Chaves, these conveyances being made in the years 1734 and 1736. It also appears from archive No. 371 in the surveyor-general's office that some time prior to the year 1785 the land claimed had become the property of one Clemente Gutierrez. The petitioners claim under deeds from the heirs of Clemente Gutierrez. It does not appear how Clemente Gutierrez acquired possession or title to the land, nor does it appear that he was in any way related to the original grantee or to Nicolas de Chaves. The petitioners claim under the grant to Antonio Gutierrez, but introduced on the trial deeds from the heirs of Clemente Gutierrez. It was admitted by counsel at the trial that he had failed to connect the claimants with Antonio Gutierrez by record or parol evidence. The claim must therefore stand alone on deeds introduced on the trial (not mentioned in the petition) from the heirs of Clemente Gutierrez. The court is asked to presume that Clemente Gutierrez was an heir of Antonio Gutierrez and to connect the petitioners with the grantee by a regular chain of title. It must further presume that Clemente Gutierrez had in some way acquired the title from Nicolas de Chaves. But if these difficulties were out of the way this is

86 not such a claim as the court is authorized to confirm by the provisions of the 8th section of the act of March 3rd, 1891. It is not pretended that the grant was ever confirmed as required by the royal instructions of 1754. The grant is therefore incomplete and imperfect and is barred by the statute of limitations, not having been filed until 1896. If the court shall be governed by the admission of petitioner's counsel, that he had failed by evidence to connect the petitioners with the grantee, this court has no jurisdiction to adjudicate the claim. A claim based on deeds from private parties unconnected with a grant or some other form of title made by an officer of the Spanish or Mexican Government authorized by law to make it is not a claim upon a title lawfully and regularly derived from the Government of Spain or Mexico.

See section 13, act of March 3rd, 1891, Reynolds' Compilation, page 14.

A majority of my brethren are of the opinion that forty years' possession and occupation of the land perfected the title by prescription, and being so perfected according to the laws of Spain and Mexico, it is such a claim as this court is authorized to confirm. This brings me to an examination of the law of prescription. In the first place, the maxim "Nullum tempus occurrit regi" applies to the Crown of Spain and the Republic of Mexico. The vacant public lands belonged to the Crown. The King is the source of all law. So, if the position assumed by the court is correct, the right to prescribe against the King must be found in

some law, order, or decree to which he has given his assent. The law of prescription is as old as the civil law. Justinian fixes the time in which possessory title to immovable things may be acquired at 26 years, but such title would not enable the party to sustain an action for the recovery of the property if possession was lost. There is some apparent confusion in the laws in force in Spain on the question of prescription, but an examination of the character of things prescribed by the two kinds of prescription, "immemorial and temporal," the difficulty is removed. Immemorial and temporal prescription is discussed together, when, in the very nature of the things prescribed and the manner of proving rights by prescription, they should be treated separate. I can

87 better illustrate by reference to 1st White's Recompilation, pages

91, 92, and 93. It is there said: "Prescription is to hold the property or thing of another for a certain time, and to make it thereby one's own, so that the right owner cannot afterwards deprive you of it. To constitute prescription, good faith (*buena fe*), just title, and a capacity of the thing for the purpose, and of the person who prescribes, are necessary; as also continued or uninterrupted possession for a determinate time." "Just title consists in the cause or consideration by which possession of the thing is obtained, being one of those by reason of which dominion is acquir'd—as purchase, gift, inheritance, etc."

This definition is too general to be applied to immemorial prescription, or to temporal prescription when possession is acquired without just title. "Temporal prescription is confined or limited to a certain number of years. To this sort belong, 1st, the limitation of a year in which the claim to the penalty incurred by judicial bail for not producing the person bailed is prescribed. The prescription of three years in which personal property is acquired, * * *. The prescription of ten years, in which real property (*las raices*) is acquired among persons present, * * *. That of 20 years, which prescribes the right of absent persons to real property * * *. That of 30 years, in which property generally is acquired, even without good faith * * *."

1 White's Recompilation, pages 95, 96.

Thirty years' possession of land without good faith, and, I will add, on just title, will enable the possessor to hold by prescription against a private party.

The rule of law requiring good faith and just title to enable a possessor of land to avail himself of prescription is necessarily confined to cases of purchase, gift, or inheritance, and therefore cannot be applied to immemorial prescription, nor to cases where parties acquire possession of land without title. Immemorial prescription proceeds upon the idea that the possessor never had title, or from lapse of time (forty years) is unable to produce it. Possession, therefore, must be proven "by witnesses of good fame or character, who depose to having seen the person in possession of the thing or property for 40 years, and

88 having heard their ancestors say that they never heard anything to the contrary."

1 White's, page 95.

As before stated, this kind of prescription has no application to cases where parties are in possession of land claiming under any sort of title, either from the Government or deeds from private parties, but is expressly confined "to the seign'ory or dominion of cities, towns, and

civil and criminal jurisdictions, but not to that which kings possess by their preeminence and prerogative, nor taxes, nor tributes." (Id., 95.)

The royal instruction of October 15, 1754, with slight modification, was in force in Spain at the date of Mexican independence. It will be found in Reynolds' Compilation, pages 50, 51, 52, 53, 54, 55, 56, and 57. This law provided a complete system for the settlement of titles to land in the Kingdom which had been issued prior and subsequent to the year 1700. Parties long in possession of land without title prior to the year 1700 were allowed to prove such long possession as just title by prescription, "with the understanding that if said royal lands are not cultivated or farmed they give them the term of three months provided by law 11 of said book and title, or that which appears best for them to do, so with notice that on the contrary they will be granted to whoever denounces them, with the same obligation to cultivate them." This was an act of grace and favor by the Crown to persons long in possession without title. It is not a recognition by the King that title had been acquired by long possession, but, on the contrary, they were permitted to acquire title on the conditions that within the time prescribed the land should be cultivated as prescribed by law; otherwise it was to be granted to others on the same condition, to cultivate it. It will be noticed that all persons claiming land by title of any kind issued by the King's officers, without reference to the length of time they had been in possession, were required to submit their titles to the proper officers and have the fact of such presentation noted on the title papers.

No one going into possession without title subsequent to the year 1700 were allowed the privilege given to those long in possession prior to the year 1700, though parties might have been in possession more than forty years prior to the year 1700 to the date of the royal instructions. On the contrary, land so held "shall be adjudged to the royal patrimony, although they are farmed, planted, or have factories," if the trespassing holders failed to comply with the requirements of article 7 of said instructions.

Parties in possession under grants made subsequent to the year 1700 which had not been confirmed by the King were required by article 5 of said instructions "to apply for the confirmation thereof to the audiences in their district, and to other officers to whom the power is given by these new instructions." It was the duty of said officers to examine as to whether the sale or composition was made without fraud or collusion, etc., and if it appears that the price of sale and composition, taxes, etc., had been paid, said officers were to issue to them, in the King's name, confirmation of their titles.

I have been unable to find any law of Spain which supports the doctrine that title by prescription could be acquired against the Crown. Neither have I found a single instance where the holders of imperfect titles have been permitted to plead any lapse of time as an excuse for their failure to comply with the requirements of law in relation to the confirmation of their titles.

Mr. Oroso, in his excellent work on Legislation and Jurisprudence on Public Land, published in 1895, discusses at great length the royal instructions of 1754, from which I copy the following extracts: "In the absence of a suit or legitimate interest of a third party, we have already

seen that the possessor has a right to demand from the Government a revalidation of his title, and in that case it is idle to inquire if a document of that character may operate or not as a just title upon which to build the right of prescription. If the defective title is produced in a suit with a third party who denounces a tract as vacant, we believe that such a title will not be sufficient as a basis for the right of prescription. The title given by a special judge would not convey the dominion in the land sold or granted to a private individual or to a corporation capable of acquiring until the said title received the royal confirmation,

90 hence the possessor of a tract the title to which lacks confirmation or annotation, never in reality acquired title by purchase or grant to the land possessed by him, and in the absence of the 'just title' by dominion, the prescription to acquire the land could not begin to run in his favor, as the requirements of confirmation was prescribed by law; ignorance of its being necessary cannot be alleged, for in no case will ignorance of the laws of the country excuse any one."

"Unconfirmed titles issued from the year 1700 on are only valid by the new payments which the interested parties may make into the public treasury in accordance with what may be provided in this regard by the royal audiences and by the solemn requirements of confirmation which the said audiences shall issue in the name of the sovereign. This is different from what happens with titles issued prior to 1700, which do not require confirmation, and with regard to which it is not necessary to make new payments for their complete validity agreeably with what we have said at the proper place."

"The provision provides that there shall be made a new payment to be fixed by the prudent discretion of the royal audiences as a condition to the issuance of confirmation for a title that is devoid if made subsequent to the year 1699 has not been repealed. Therefore, if a holder of a title of that kind has recourse at the present day to the president of the republic, asking that the defects in his title be corrected, he will certainly be obliged to pay into the national treasury such sum of money as the executive equitably and prudently may fix, and the executive can not wholly dispense with this payment, only when he is expressly given the authority to dispense with taxes and other property of the public treasury."

"Titles lacking confirmation is certainly insufficient to justify the dominion of a tract of land as against the nation, for the requisites of confirmation is material and has been dispensed with only in the case of titles prior to 1700, on condition that they were to be presented before the subdelegates or royal commissioner and duly annotated by them."

91 Without pursuing this further, it is quite clear to me that the grant in this case is incomplete and imperfect and not in any way affected by prescription. Tested by the laws of Spain and Mexico, to which we are limited by the act creating the court, on all the grounds herein set out, the claim should be rejected and the petition dismissed.

(Signed)

Wm. W. MURRAY,
Associate Justice.

UNITED STATES OF AMERICA, ss.

Court of Private Land Claims, Santa Fe district.

J. FRANCISCO CHAVES AND PUEBLO OF ISLETA,	plaintiff and appellee,	vs.	No. 275. Joaquin
THE UNITED STATES, DEFENDANT AND APPEL-			

The above-named defendant, The United States, considering itself aggrieved by the decree entered on the 2nd day of June, 1897, in the above-entitled proceeding, doth hereby appeal from said decree to the Supreme Court of the United States, and it prays that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

MATT. G. REYNOLDS,
U. S. Attorney for Defendant and Appellant.

It is ordered that an appeal be, and hereby is, allowed as prayed for.
This Oct. 11, 1897.

JOSEPH R. REED, *Chief Justice.*

Citation on appeal to Supreme Court.

UNITED STATES OF AMERICA, ss:

The President of the United States to J. Francisco Chavez and Pueblo of Isleta, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the Court of Private Land Claims, wherein the United States is appellant and you are appellees, being cause No. 274 on the docket of said Court of Private Land Claims, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this eleventh day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

WILBUR F. STONE,
Associate Justice, Court of Private Land Claims.

We hereby acknowledge service of the foregoing citation for and on behalf of the plaintiffs and appellees this sixteenth day of October, 1897.

F. W. CLANCY,
Attorney for J. Francisco Chavez.

G. L. SOLIGNAC,
Attorney for Pueblo of Isleta.

46 THE U. S. VS. J. FRANCISCO CHAVEZ AND PUEBLO OF ISLETA.

94 UNITED STATES OF AMERICA,
Territory of New Mexico:

I, James H. Reeder, clerk of the Court of Private Land Claims, do hereby certify that the foregoing 93 pages contain a full, true, and perfect transcript of all record entries and proceedings, and of all the files and papers in the cause lately pend'g in said court in which J. Francisco Chavez and the Pueblo of Isleta were plaintiffs and the United States were defendants, No. 274, as the same appear of record and on file in my office.

Witness my hand and the seal of said court at my office at Santa Fe, New Mexico, this 1st day of December, A. D. 1897.

[SEAL.]

JAMES H. REEDER, *Clerk,*
Per IRENEO L. CHAVES, *Deputy.*

(Indorsement on cover:) Case No. 16743. Court of Private Land Claims, term No. 208. The United States, appellant, vs. J. Francisco Chavez and Pueblo of Isleta. Filed December 9, 1897. Office Supreme Court of U. S. Received Dec. 9, 1897.



In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES,
appellant,
v.
J. FRANCISCO CHAVEZ
et al. } No. 207. Antonio Gutierrez
grant in New Mexico.

THE UNITED STATES,
appellant,
v.
J. FRANCISCO CHAVEZ
et al. } No. 208. Joaquin Sedillo
grant in New Mexico.

**APPEAL FROM THE COURT OF PRIVATE LAND
CLAIMS.**

BRIEF ON BEHALF OF THE UNITED STATES.

On September 9, 1896, J. Francisco Chavez filed two petitions in the Court of Private Land Claims, one praying for the confirmation of the Antonio Chavez grant and the other the Joaquin Sedillo grant adjoining,

situated in Valencia County, N. Mex., alleging that the grants were complete and perfect at the date the United States acquired sovereignty over the Territory; these claims were thus brought under section 8 of the act establishing the Court of Private Land Claims, as claims for perfect grants, as those provided for in section 6 of the act were barred, section 12 requiring that they be filed before March 3, 1893.

Although these petitions involved different grants, the unity of ownership or claim of ownership for many years, the alleged enjoyment and possession for a number of years, irrespective of the common boundary line between the two, and other circumstances common alike to each induced the Court of Private Land Claims to try the cases together, and the opinions and decrees covered both causes.

The origin of the claimants' rights, if any, being under different grants to separate individuals, it is deemed proper in presenting them as one case to state them separately. The references to the record, except when otherwise stated, are to the record in case No. 207.

First, as to the Antonio Gutierrez grant in No. 207

The allegations of the petition in this case (R., 1, 2) were substantially as follows:

That on November 5, 1816, Capt. Antonio Gutierrez presented to Capt. Felix Martinez, the then governor and captain-general of New Mexico, his petition asking for a grant of a piece of land below Isleta, apparently at a distance of 2 leagues, which formerly had been held by Cristobal de Tapia, and setting forth that the boundaries of said land were, on the north an arroyo de alamos, which

comes down from the hills; on the south the pueblo of San Clemente; on the east the Rio del Norte, and on the west the hills of the Rio Puerco. On the same day the said governor, in the name of the King, made to the said petitioner the grant that he asked for, as he described it and as Cristobal de Tapia formerly enjoyed it, and directed Capt. Baltazar Romero to place the said petitioner in possession. It was alleged that the original of said petition and grant was known as archive No. 315 in the office of the surveyor-general for New Mexico, and copies thereof were filed with the petition.

That after the making of said grant the said Antonio Gutierrez entered into possession of said land, and he and his lawful successors in title from that time down to the present have had continuous and uninterrupted possession of the land embraced in said grant.

The claimant expressly averred that the eastern boundary of said grant, as set forth in his petition, refers to the old river bed of the Rio Grande del Norte, which at the northern portion of said grant was about 2 miles farther east than the present bed of said river, and that it was impossible to state even approximately the quantity of land embraced in said grant, as no survey thereof had ever been made; that the Arroyo del Alamos, mentioned as the north boundary, can not now be identified, probably owing to changes in the earth's surface which have denuded the arroyo, if it still exists, of all trees, and which may have entirely obliterated the arroyo itself; and that no tradition of its location has been preserved for the reason that this tract of land and the one immediately north of it, which had been the property of Joaquin

Sedillo, had become united in the ownership of a single person as early as the year 1734.

A sketch map was filed, showing the location of this grant with reference to the Joaquin Sedillo grant (R., opp. 35).

An abstract of title was filed by the claimant Chavez (R., 2,3), which set forth that the claimant was unable to present any direct conveyance from the original grantee or from his heirs with which he was in any way connected; that he relied upon the papers contained in archive No. 178 in the office of the surveyor-general for New Mexico to show that the original grantee, Antonio Gutierrez, took possession of said tract of land and afterwards transferred the same to Diego Padilla, who in turn conveyed the same to Nicolas de Chavez.

It is proper to state here that this assertion as to the deraignment of title is sustained only in part by the record. It is true that Diego Padilla succeeded to all the interest of Antonio Gutierrez at some time prior to January 7, 1734. This appears from deed of January 7, 1734, from Diego Padilla to Diego Borrego (R., 16), wherein the grantee, deeding land that was conveyed to him by Antonio Gutierrez, recites that he has the title papers of the whole tract. It is further apparent, however, from this deed, that there was conveyed by Padilla to Borrego, and thereupon by Borrego to Nicolas de Chavez, only a portion of the title acquired by Padilla from Antonio Gutierrez, for the south boundary of the lands deed by Padilla (R., 16), is recited to be the "land of the said Diego Padilla," thus showing that he

retained a portion for his own use. The status of this Antonio Gutierrez title in 1736, as shown by archive 178, is therefore that the northern portion of it was owned by Nicolas de Chavez and the remainder by Diego Padilla. It is further averred in claimants' abstract of title that at some time prior to the year 1785 the tract claimed had become the property of Clemente Gutierrez, this being shown by archive No. 371 in the office of the surveyor-general of New Mexico, said archive being a record of the proceedings as to the estate of said Clemente Gutierrez. There is no specific averment in the petition that Clemente Gutierrez succeeded to the title of Nicolas Duran de Chavez or to that of Diego Padilla, and there is a total failure of proof on this point. The record thus discloses a break of fifty years in the title to this tract, and when it is resumed in 1785, there is no claim that the land is held under the Antonio Gutierrez grant or under Duran de Chavez and Diego Padilla, the erstwhile owners of that grant, but (R., 20), the tract is described as "a ranch below the boundary of the Pueblo of Isleta * * * of which they have *possession*, although there is no title deed of its boundaries."

The allegations of the petition filed in the Joaquin Sedillo grant case, No. 208, were substantially as follows (R., case No. 208, pp. 1, 2):

That some time in the early part of the eighteenth century a grant of land was made by the proper authorities of the Government of Spain to one Joaquin Sedillo, which land lies immediately south of the lands of the Indian pueblo of Isleta, and was bounded on the north

by the line of the league of said pueblo, on the east by the Rio Grande, on the south by the twin alamo, called by some the alamo de la culebra, and on the west by the ceja of the Rio Puereo; but the original grant papers evidencing the said grant have been lost or destroyed and can not now be produced. The fact of the existence of the said grant is, however, shown by the papers which constitute a portion of archive 178 in the office of the surveyor-general for New Mexico (tendered on the trial).

That from the time of the making of said grant the said Joaquin Sedillo and his lawful successors in title have been in continuous, peaceable, and uninterrupted possession of the land embraced within the grant down to the present time. That the boundaries of said grant are as before set forth, but it is expressly averred that the eastern boundary refers to the old river bed of the Rio Grande, which is about 2 miles farther east than the present bed of that river. That it is impossible to state, even approximately, the quantity of land embraced in said grant, as no survey thereof has ever been made; that the southern boundary hereinbefore mentioned has, as petitioner is informed and believes, been completely destroyed and its location can not now be identified with certainty, and it is probable that no tradition of its location now exists, for the reason that the said tract of land and the one immediately south thereof (Antonio Gutierrez grant) had become united in ownership in the hands of one person as early as the year 1734, as will fully appear by reference to the said archive 178 thereinbefore mentioned.

The abstract of title in the Joaquin Sedillo Case (R., case No. 208, pp. 2, 3) states among other things:

The claimant is unable to present any direct conveyance from the original grantee or from his heirs, with which he is in any way connected, but he relies upon archive 178, in the office of the surveyor-general for New Mexico, to show that the heirs of Joaquin Sedillo, in the year 1734, sold and conveyed the said tract of land to Diego Borrego and that the latter, in the year 1736, conveyed the said land to Nicolas de Chavez.

* * * * *

The claimant relies upon archive No. 371 in the office of the surveyor-general of New Mexico to show that at some time prior to the year 1785 the said land had become the property of Clemente Gutierrez. The said archive No. 371 is a record of the proceedings as to the estate of said Clemente Gutierrez * * * [which] shows the inventory of all the real estate belonging to said Clemente Gutierrez and the hijuela given to each of the heirs showing their respective shares of said real estate.

Under these allegations in the abstract of title, which are sustained by the record, the ownership of the Joaquin Sedillo grant was vested in 1736 in Nicolas de Chavez. From 1736 to 1785, when there was an inventory of the estate of Clemente Gutierrez, there is a break in the title, and there is absolutely nothing to show that Clemente Gutierrez acquired this land under the Joaquin Sedillo grant or from Nicolas de Chavez, the vendee thereof, or in fact how he acquired it, save such inference as may be drawn from the language in the inventory of his estate (R., 20) above quoted, which indicates that he held a mere possessory title.

The abstract of title further sets forth several deeds upon which claimant relies to connect himself with the title of said Clemente Gutierrez.

On November 13, 1896, the Indians of the pueblo of Isleta filed petitions in both cases, alleging an interest in the grants, and praying to be allowed to come into these cases as copetitioners with J. Francisco Chavez, which petitions the court granted and allowed. (R., 5.)

The Indians did not set up the boundaries of the tract claimed by them, but simply allege an interest in the two grants, and pray that the validity of the grants sued for be considered.

The causes came on for trial on May 5, 1897, being heard together. Claimants' documentary evidence, so far as it was material to the Antonio Gutierrez grant case, consisted of archive 315, from the office of the surveyor-general (R., 11-13), which appears to be a petition to the governor by, and a grant to, Antonio Gutierrez of the tract referred to by that name; and two deeds, one dated January 7, 1734, by Diego Padilla to Diego Borrego of a portion of said lands acquired by Padilla from Antonio Gutierrez (R., 16), and another deed from Borrego to Nicolas de Chavez (R., 13), dated August 16, 1736, covering the same premises, both said deeds being portions of archive 178 in the office of the surveyor-general of New Mexico. The contents of the first of these deeds have been discussed above, it being a conveyance by Diego Padilla to Diego Borrego, dated January 7, 1734, of a piece of land which he (Padilla) "had and possesses by donation, which, in favor of said Padilla, was made by Capt. Antonio Gutierrez, and its boundaries are: On the

north, lands of Joaquin Sedillo; on the east, the Rio Grande; on the south, land of the said Diego Padilla, there serving as a landmark on the said boundary the midway line between the two houses which the said Padilla built near the boundary line on the said donation; and on the west, with the boundary line called for in the title papers of the whole tract which the said Padilla has." By this conveyance, as above shown, Borrego became the owner of a portion of the Antonio Gutierrez tract, the remainder being at that date the property of Diego Padilla.

The second of these deeds is a conveyance by Diego Borrego to Nicolas de Chavez, dated August 16, 1736, by which he conveys the tract mentioned in the deed last discussed and that mentioned in another deed, dated January 11, 1734, hereinafter discussed in connection with the Joaquin Sedillo grant. This deed of August 16, 1736, purports to convey "a tract of land for the pasturage of small stock, neat cattle, and horses, and also agricultural lands which he acquired by real sale from the heirs of Joaquin Sedillo; and he also said that he gave and did give, together with this real sale and annexed thereto, a donation which to the said Diego Basquez Borrego was made by Diego Padilla, in which appeared the free and general administration in order that he might make use according to his will of the said tract, the one and the other situate below Isleta, commonly called San Martin, and as it appears by his instruments their boundaries are, on the north lands of the pueblo of Isleta and on the west the Rio Puerco; on the south the house of the rancho of Diego Padilla, the said donation being

included in this conveyance, and on the east the Rio Grande," etc. With this deed of 1736 all mention of Antonio Gutierrez or of any grant to him ceases in the record.

The documentary evidence presented as bearing especially on the Joaquin Sedillo grant is comprised entirely in two deeds in archive 178. This consists (R., 18) of a deed dated January 11, 1734, executed by Antonio Sedillo, "legitimate son of Joaquin Sedillo and forced heir of the aforesaid," in which he conveys a tract of land "down the river and below the pueblo of Isleta, * * * and gives and did give in real sale the said tract, after consultation and with the consent of his mother and his brothers and sisters, who gave him authority for the same, because the said Joaquin died in debt, and in order to procure the amount which he owed; and the said Antonio Sedillo acknowledges that the said tract was acquired by his said father *in part by grant in the name of His Majesty, and in part acquired and held under real sale, etc.*" This instrument is executed in favor of Diego Borrego and it is to be noted that the recitals therein are the only proofs in this record as to a grant to Joaquin Sedillo, or as to the nature, character, and extent of such a grant.

The second deed in archive 178 is dated August 16, 1736, and is one from Diego Borrego to Nicolas de Chavez by which he conveys the tract mentioned in the deed last discussed and in another deed dated January 7, 1734, discussed above in connection with the Antonio Gutierrez grant. The contents of this deed are fully

set forth above. With this deed of 1736 all mention of Joaquin Sedillo and of any grant to such a person ceases in the record.

The next document was tendered in evidence as germane to both claims and is archive 371 (R., 19-23), being an inventory of the estate of Clemente Gutierrez made in 1785. From this it appears that Clemente Gutierrez at the time of his death owned a portion of the land embraced within the grants claimed. As above pointed out, there is nothing in the archive or in the record at all to show how Clemente Gutierrez acquired this property. The only recital on this subject is the one above quoted, found in the inventory (R., 20), where the land is described as a tract "of which they have possession, although there is no title deed of its boundaries."

The remaining documentary evidence (R., 23-26) showed the purchase by one Francisco Xavier Chavez of certain interests, less than the entire fee, in the Bosque de los Pinos, a tract of land lying immediately south of the lands of the pueblo of Isleta and between the old and new beds of the Rio Grande, and being thus the east end of the lands covered by the two grants as claimed. This "Bosque de los Pinos" does not mean, as the court seems to have assumed in its opinion, a "grove of pines." The term "bosque" in New Mexico refers to a grove of a particular kind of trees, to wit, the poplar or cottonwood. The expression properly rendered is "the cottonwood grove of the Pinos."

The plaintiff, J. Francisco Chavez, was further shown to be the grandson of said Francisco Xavier Chavez and to claim said premises by inheritance.

There was also documentary evidence (R., 26, 27) showing that the Indians of Isleta had acquired interests in land west of the present bed of the Rio Grande and within the claimed limits of these two grants, by purchase from the heirs of Clemente Gutierrez, as early as 1808. There was no evidence on the trial, however, showing the extent or boundary westward of the lands so purchased by the Indians.

Testimony was also received (R., 7-10) showing that the ancestors of the plaintiff, Chavez, had for many years been in possession of the Bosque de los Pinos, claiming under the several purchases from the heirs of Clemente Gutierrez, and it was admitted by the Government that the Indians of Isleta had held possession of lands on the west side of the Rio Grande as far back as the memory of the oldest man living within the pueblo can extend, said possession being claimed under purchase from the heirs of Clemente Gutierrez (R., 10).

The only evidence, therefore, of a grant to Antonio Gutierrez is archive 315 (R., 11-13), being the petition by and grant to Antonio Gutierrez in 1716; and the attention of the court is directed to the absence of any act of juridical possession in this document. The only evidence of a grant to Joaquin Sedillo is a recital in a deed made by one of his heirs to Diego Borrego, the conveyance dated January 11, 1734, and heretofore referred to (R., 18, 19).

It is to be noted that neither of these instruments sets forth the boundaries satisfactorily, and there is no oral proof establishing their location; that the claimants candidly admit in their petitions that they are unable to

establish the location of the natural objects constituting respectively the south boundary call of the Sedillo grant and the north boundary call of the Gutierrez grant; that the Sedillo grant did not and could not extend from the Gutierrez grant to the lands of the Indians of Isleta, as claimed by plaintiffs, for the reason that the Sedillo tract (see deed of January 11, 1734, in archive 178, R., 18) was acquired "in part by grant in the name of his Majesty and in part acquired and held by real sale, as shown by five instruments which he delivers;" that in order to give effect to this recital and to make room for this land purchased by Sedillo his grant could not have occupied the whole of the land lying between the Gutierrez grant and the league of the Indians of Isleta; that there is absolutely no connection shown between Clemente Gutierrez and the original grantees, Sedillo and Gutierrez, or their vendees, Nicolas de Chavez and Diego Padilla, and that the claimant, in his abstracts of title above quoted, frankly admits his inability "to present any direct conveyance from the original grantee or from his heirs *with which he is in any way connected.*"

These facts being uncontroverted by the testimony, it was contended by the Government:

1. That there had been no sufficient proof of a grant either to Antonio Gutierrez or to Joaquin Sedillo.
2. That there was no sufficient proof of the boundaries of such grants, if there were grants.
3. That claimants not having connected themselves with the Spanish or Mexican Government by showing a deraignment of title or a succession of interests from the grantee of such Government, the court had no jurisdiction.

tion to confirm the claim, the right of the court to confirm grants being limited to titles "lawfully and regularly derived from the Government of Spain or Mexico," etc. (Sec. 13, act of 1891.)

4. That these titles were not complete and perfect at the date when the United States acquired sovereignty over the Territory of New Mexico, and as the petitions were filed subsequent to March 3, 1893, the court was without jurisdiction to confirm.

On May 25, 1897, the court, through Mr. Justice Sluss, handed down an opinion confirming the two grants as one tract of land, but confirming the portion of it known as the Bosque de los Pinos to claimant Chavez, and the land on the west side of the present river bed to the Indians of Isleta. (R., 37-40.) Mr. Justice Murray dissented, and in a well-written and learned opinion sustains the contentions of the Government. (R., 40-44.)

The United States prayed and was allowed an appeal on October 11, 1897 (R., 45), and the causes are now before this court for determination.

ARGUMENT.

The decision of the Court of Private Land Claims in this case should be reversed and the claim rejected for the following reasons:

1. There is no sufficient proof of a grant to either Antonio Gutierrez or to Joaquin Sedillo, or of a grant at all.

2. Even if there were a grant to one or both of these parties, claimants herein have not connected themselves therewith, so as to give the court jurisdiction of their claim.

3. Even if the proof be adjudged sufficient to establish a grant to one or both of these parties, the title conferred thereby was not complete and perfect at the date when the United States acquired sovereignty over the Territory of New Mexico; and the claims herein presented are therefore barred by the provisions of section 12 of the act of March 3, 1891.

4. A confirmation of the land lying east of the present bed of the Rio Grande to J. Francisco Chavez and of that lying west of the present bed of the Rio Grande to the Indians of Isleta is not justified by the record or by the provisions of the act establishing the Court of Private Land Claims.

I.

There is no sufficient proof of a grant to either Antonio Gutierrez or to Joaquin Sedillo, or of a grant at all.

A.

The only proof of a grant to Antonio Gutierrez is an incomplete paper found in the archives and bearing archive No. 315. From this document it appears that Antonio Gutierrez presented a petition for a grant formerly held at Cristobal de Tapia, in which he names certain boundaries and prays that real possession may be given him of this tract. On November 16, 1716, it was presented to Governor Martinez, who on that day makes "to the petitioner the grant that he asks for, as he describes it and as Cristobal de Tapia formerly enjoyed it." What the terms or conditions were upon which Tapia

formerly enjoyed it do not appear. It is evident, however, that the title Tapia held was not an absolute one, but a forfeitable one; otherwise there would have been no right in the governor to grant the land to Gutierrez. Thus, whatever the form of this Tapia grant, it is certain that Gutierrez at most received no more title than Tapia had, which was at best a defeasible and forfeitable title.

Further, there is no certificate of act of possession indorsed on the grant. There is a provision in the granting order that Capt. Baltazar Romero shall, after giving the possession, return the grant and possession to the governor's secretary. It was the custom that the officer executing the act of possession indorse on the grant document the formal certificate of his having done so. The original archive consists of a sheet of four pages, and the petition and order thereon occupies only two and a half pages, the remaining page and a half being blank. The fact that there is no act of possession entered thereon or found therewith indicates either that the governor, for some reason after receiving the petition and making the granting order, never delivered it to Gutierrez, but retained it in the archives; or that when handed Captain Romero, so that he might give possession, he found it impracticable to do so for some reason and returned the document to the archives.

Much importance was attached to this delivery of juridical possession by Spanish authorities. (1 White, 341, *et seq.*)

The necessity for delivery of possession in order to give a grant validity was emphasized in 1750 by Governor Thomas Velez Cachupin, as shown by archive

769 in the office of the surveyor-general of New Mexico. From the proceeding set forth in that archive it appears that certain heirs of Don Alfonso Rael de Aguilar in 1750 presented their petition to Governor Cachupin, setting forth that a grant was made to them by Governor De Vargas in 1696, and requesting that their right thereto be recognized. Governor Cachupin thereupon directed them to present their title papers. They thereupon produced a certified copy thereof which showed, as in this case, a petition and a grant, but no act of possession. Governor Cachupin thereupon declared the instrument to be a "nullity," giving as a reason for this conclusion, among others, the fact that "*the possession and the settlement of the plain of Los Cerrillos do not appear in the same.*"

This proceeding is most instructive as a contemporaneous construction by the chief official of the province of the necessity for juridical possession. A translation of so much of the archive as is relevant is attached to this brief as an appendix.

The fact that Gutierrez, as shown by deed of January 7, 1734 (archive 178 R., p. 16), conveyed all of this land to Padilla, does not prove that Gutierrez had full title to the property by possession conferred, but simply that he deeded Padilla such title as he had.

Nor is there any sufficient proof of the north boundary of the Antonio Gutierrez grant. This boundary is stated to be "an arroyo with some cottonwood trees." There is no proof as to the location of this, either as a matter of fact or of tradition. Indeed, claimants' petition (R.,

2) admits that this is a fact, but alleges that this defect is obviated by the fact that this tract is bounded on the north by the Joaquin Sedillo property and that these two tracts were united in ownership at an early date. The indefiniteness surrounding the Sedillo claim is hereinafter pointed out, and if the Gutierrez grant must depend for its location upon the *situs* of the Sedillo tract or grant, it is believed that this court will have no alternative but to reject this branch of the claim for vagueness and uncertainty as to the northern boundary.

B.

The only evidence of a grant to Joaquin Sedillo offered on the trial was deed dated January 11, 1734, from Antonio Sedillo, legitimate son and forced heir of Joaquin Sedillo, wherein (archive 178, R., 18) he conveys to Diego Borrego, for \$200, a tract of land "acquired by his said father in part by grant in the name of *His Majesty* and in part acquired and held under real sale, as shown by five instruments which he delivered."

The conclusion of the court that this was a grant to Joaquin Sedillo thus rests solely upon the recital in the deed between these private parties.

1. This, it is contended, is insufficient to establish a grant.

To hold that it is sufficient is to hold that a declaration made by the party in interest that he has a grant from the Government is to be taken as evidence of that fact, although the Government was no party to the document and in no sense interested therein. That such recitals are not evidence against persons not parties to the

instrument or claiming in privity therewith is a proposition of law that hardly needs authority to sustain it.

The following are, however, a few of the numerous cases sustaining this position:

United States v. Hughes, 13 How., 6.

Fuentes v. United States, 22 How., 443.

Simmons Creek Company v. Doran, 142 U.S., 437.

Probably no better statement of this contention could be made than to quote from a decision of the Court of Private Land Claims in another case, for the confirmation of what was known as the Sebastian de Vargas grant, wherein it was sought to establish a grant by recitals in other grants and also by recitals in private deeds. This opinion forms a portion of the transcript in case No. 74, October term, 1897, on the dockets of this court, wherein the appeal was, on October 27, 1897, dismissed under the tenth rule. The court below in this case, by a bare majority, confirmed a portion of the tract therein claimed so far as it was referred to in adjacent grants, but rejected the portion a grant of which was sought to be established by the recitals of deeds tendered in evidence. The opinion of the court, delivered by Mr. Justice Sluss, the same learned judge who rendered the opinion of the court in this case, contains the following:

It is contended that these two deeds, being more than thirty years old, are within the category of "ancient deeds," and that their recitals are competent evidence and are sufficient to establish the existence of the grant to de Vargas and the facts of the conveyance from de Vargas to de Sena.

There is no rule of law conferring particular sanctity or probative force upon the recitals on a

deed which happens to be thirty years old. Such recitals are simply statements of the party who made the deed. The deed is simply evidence that he made the statement. The statement is entitled to no more weight by reason of being written in a deed than it would have if the making it was satisfactorily proven beyond testimony. Recitals in deeds are binding on those who make them and on those who claim under them. But such recitals are not even evidence against those who claim adversely or by title paramount to the deed. The facts of this case illustrate the absurdity of any other rule. * * *

2. Such a recital, viewed as a statement by Antonio Sedillo that his father had a grant, is, under the most favorable construction, but secondary evidence of the existence of such a grant. The best evidence is manifestly the grant itself, produced from the archives, or the *testimonio* thereof, which was always given to the grantee, produced from the custody of his successors in interest. Neither of these were produced and no attempt was made to account for their absence. Hence no foundation was laid for the use of this recital as evidence of a grant.

3. But, conceding that a recital of this kind establishes that a "grant" was made to Joaquin Sedillo, the question remains, What kind of a grant was it?

The Court of Private Land Claims is a court of limited jurisdiction.

Ainsa v. United States, 161 U. S., 222-223.

Cessna v. United States, 169 U. S., 187.

Hayes v. United States, 170 U. S., 637-647.

Before parties can secure a confirmation at its hands, they must bring themselves by their proof within its

jurisdiction. Until they do this the court is powerless to act. It seems proper, therefore, to call attention to a few of the provisions of statute under which, and only under which, the court below is permitted by law to proceed.

Under section 6 of the act of March 3, 1891, parties are required to set forth in their petition—and since they must allege it they must prove it—"the *date and form* of the concession, warrant, or order of survey."

In this case no attempt was made to allege or to prove the *date* of the grant, if there was a grant, so as to enable the court to determine whether it was made at a time when the local authorities of New Mexico or other authorities short of the Crown could make a grant. No attempt was made to allege or to prove its *form*, so as to enable the court to decide whether it conveyed the fee or something short of the fee. *Non constat* but that it was a mere license to occupy, or a mere permit to pasture, such as was held by this court in *Zia v. United States* (168 U. S., 198) to be not entitled to confirmation under the act of 1891. The definition of the word "grant" as given in the case of *Strother v. Lucas* (12 Pet., 436) is broad enough to have included either of these. *Non constat*, further, but that it was a grant made upon conditions proof of performance of which "within the time and manner stated in the concession" is made by subsection 8 of section 13 of the act of 1891 a prerequisite to a confirmation.

Section 6 of the act of March 3, 1891, further provides that claimants of grants must set forth the authority "by whom made," or, as it is more forcibly stated in sub-

section 1 of section 13 of the land court act, "no claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the Government of Spain or Mexico."

However, as to this "grant" it is not alleged nor proved "by whom it was made;" *non constat* but that it was made "in the name of His Majesty" by an alcalde or by some other of the subordinate officials, who so frequently and without authority assumed the power to alienate the public domain in New Mexico under the Spanish Government. As held by this court in construing this very language of the act in the case of *Hayes v. United States* (170 U. S., 647):

By the first subdivision of the thirteenth section of the act creating the court of Private Land Claims, that court and this court on appeal are expressly prohibited from allowing any claim under the act "that shall not appear to be upon a title lawfully and regularly derived from the Government of Spain or Mexico, or from any other of the States of the Republic of Mexico having lawful authority to make grants of land." This manifest limitation upon the power of the court in passing upon the validity of an alleged complete grant requires that the court shall not adjudge in favor of validity unless satisfied from the inherent evidence contained in the grant, or otherwise, of an essential prerequisite to validity, *viz.*, the authority of the granting officer or body to convey the public domain.

In the same case this court, after comparing the act of 1891 with other acts, says:

But in the act of 1891 the court is required to be satisfied not simply as to the regularity *in form*, but

it is made essential before a grant can be held legally valid that it must appear that the title was "lawfully and regularly *derived*," which imports that the court must be satisfied, from all the evidence, that the official body or person assuming to grant was vested with authority, or that the exercise of power, if unwarranted, was subsequently lawfully ratified.

Under the act of 1891 it is further provided (section 6) that no decree shall be entered otherwise than upon full legal proof and hearing. Measured by the requirements of the statute, it must be admitted that the proofs fall very far short of what is necessary to secure a confirmation. Even if the declaration of Antonio Sedillo, that his father had a grant, be accepted as evidence against the United States, such a declaration is not in the slightest degree inconsistent with the theory that the title held by Joaquin Sedillo was not in fee simple and was not "lawfully and regularly derived" from the Government of Spain.

In the Jose Garcia Case, a grant claim decided by the Court of Private Land Claims since that here appealed from, the subject here discussed has been considered very fully. In that case the recitals of a grant to the predecessors in interest of claimants were not in private deeds, but in grant documents, in one or two instances over the signature of the governor of the province itself. The recital of a grant to Garcia was made in these not once, but in three separate and solemn instruments signed by the *alter ego* of the Crown himself; and yet the Court of Private Land Claims held upon these facts that the claim could not, under the wording of the act of 1891, be sustained. A copy of the opinion in that case, which is

entitled *Mariano S. Otero v. United States*, No. 92, is attached to this brief as a part hereof. It can hardly be doubted that had the present case been considered by the court below, with the light it had before it in the consideration of the Jose Garcia grant, the judgment herein rendered would have been a very different one.

4. Even if the evidence be adjudged sufficient to establish a grant to Joaquin Sedillo, and such a grant as the Court of Private Land Claims is invested with jurisdiction to confirm, there is no proof of what the boundaries of that grant are. The provisions of the act of March 3, 1891, require allegations and proof of boundaries of the grant claimed. In fact, the decision of these questions is one of the most important duties confided to the court, involving an investigation by the court on the trial of the claim (section 7 of the act of 1891) and another inquiry, when the survey of the grant, if confirmed, comes back to the court for consideration (section 10 of the act of 1891). In this case, however, there is no proof of such boundaries. The only documentary evidence tendered on this subject is the recital of the deed of January 11, 1734, above referred to. In that instrument the boundaries of the tract sold by the heirs of Joaquin Sedillo to Diego Borrego are stated to be: "On the north, the line of the league of the Isleta Pueblo; on the east, the Rio Grande; on the south, a twin *alamo* called by some *culebra*, and on the west, the ridge of the Puerco."

Were these the boundaries of the grant, the proof would still fail, for there is nothing to indicate the location of the south boundary, and, in fact, claimants, in

their petition in the Sedillo Case (R., 1), admit that the location of that boundary can not be identified with certainty, and that probably no tradition of its location now exists. However, the boundaries just recited are not the boundaries of a grant to Sedillo, but of what is called a grant *plus* five purchases. The language referring to the boundaries just recited is: "The said tract was acquired by his said father in part by grant in the name of His Majesty, and in part acquired and held *under real sale*, as shown by *five instruments* which he delivered." How much of this land was held by grant? How much was held by purchase under these five conveyances? What were the boundaries of the portion held by grant? Was said granted portion in the northern part of the tract, next to the Indian pueblo lands, or in the southern portion, toward the Gutierrez lands? Was it on the east, next to the Rio Grande, or on the west, next to the hills of the Puerco? Since the Court of Private Land Claims can confirm only *grants* and grants "lawfully and regularly derived," it was incumbent on claimants to separate the land held under grant from that under purchase, so as to enable the court to declare in its decree what the boundaries of the grant were. To ask the court to confirm a tract with the above boundaries as a grant to Joaquin Sedillo is to ask the court not only to adjudge that as to which there is no proof, but to decide something which is negatived by the proof. To declare that Joaquin Sedillo had a grant with the boundaries recited in the deed of January 11, 1734, is to ignore the language of that deed, which

specifically states that a portion of said lands was held by purchase and not by grant.

The defects in the documentary evidence on this point are not remedied by any oral proof showing tradition as to the boundaries of the grants claimed. In response to a question from counsel for the Government (R., p. 10) Colonel Chavez, the principal claimant, admitted that his only knowledge of the location of the two grants claimed was derived from the title papers presented and from an argument of counsel for the Government at a former term. This last reference is to the trial of the Ana de Manzanares, or San Clemente grant case, the title papers and the decree in which are in the record, introduced by claimants (R., 32-35), and in which case the archives relied upon by the claimants herein were offered in evidence by the United States and discussed by counsel for the Government as bearing upon the location of the north boundary of the San Clemente grant. It is not going out very far beyond the record to say that claimants herein had no knowledge of the existence of the archives upon which they now rely until long after the San Clemente claim was presented, and that they made no claim under these archives as muniments of title until after the decision in the San Clemente case had established that their claim was not a part of that grant. The San Clemente claim, as shown by the record, was decided September 4, 1896, and the claims herein sued for were filed September 9, 1896.

Claimants appear by their pleading to attempt to remedy the defects in the proof as to their south bound-

ary, and as to the boundaries generally, by the allegation that the Sedillo grant is immediately adjacent to the Gutierrez grant, and that the two, conterminous with each other, at an early date became a single tract, extending from the pueblo lands on the north to the San Clemente lands on the south. This contention is doubtless based upon the recital in the deed dated January 7, 1734 (R., 16), wherein Diego Padilla, in conveying the north part of lands acquired by him by donation from *Antonio Gutierrez*, described said lands as bounded on the north by the *lands of Joaquin Sedillo*. However, the lands of Sedillo, as described in deed, dated only four days later, from his heirs to Borrego (R., 18) are, as above shown, defined as consisting of lands acquired by grant and "under real sale," which brings us back to the unknown quantity above referred to, to wit, what part of this tract was by grant and what part by real sale? Until this last question is answered the court is powerless to proceed, that is, unless the act of 1891 is to be held to confer power on the court to confirm not only claims based upon "grants, concessions, warrants, or orders of survey" (section 6 of the act of 1891), but also those based upon purchase from private individuals and upon possession from time out of mind. This brings us to the next proposition in connection with this grant to Sedillo.

5. There can be no confirmation of this claim as a title by prescription.

There was proof on the trial of the cause that the portion of the two grants therein claimed lying east of the

present bed of the Rio Grande, said portion being known as the Bosque de los Pinos, had been occupied by the predecessors in interest of the claimant J. Francisco Chaves since the early part of the century under conveyances from the heirs of one Clemente Gutierrez, who, as appears from archive 371 (R., 19), was in possession of the premises at the time of his death in 1785. It was admitted by the United States, so far as the portion of these two grants lying west of the present bed of the Rio Grande is concerned, that the Indians of Isleta had notoriously occupied lands therein as far back as memory can extend, under conveyances from the heirs of Clemente Gutierrez. It was not admitted by the United States that this occupancy extended to all the tract west of the Rio Grande, and the only conveyance in evidence to said Indians, a paper dated 1808 (Plaintiffs' Exhibit G, R., 27), fails to show the east and west boundaries of the tract purchased by them. Hence, the state of this branch of the record is simply to show that the Indians of Isleta have been occupying pieces of land, the boundaries of which are not given, on the west side of the present bed of the Rio Grande, between their patented lands and the lands of Los Lentes or San Clemente, from time out of mind.

Does this state of facts justify the Court of Private Land Claims in decreeing a confirmation to said parties as a matter of prescription?

It does not seem necessary for the purpose of the present case to go at length into the question as to whether title by prescription would run against the Spanish Crown. The principle of *nullum tempus* is one universal to all

nations, and is firmly engrafted upon our own system of government.

Lindsey v. Miller, 6 Pet., 672.

Weber v. Harbor Commissioners, 18 Wall., 70.

Sparks v. Pierce, 115 U. S., 408.

Gibson v. Chouteau, 13 Wall., 99.

Redfield v. Parks, 132 U. S., 239.

The reason of the principle is very clearly stated in the case of *Lindsey v. Miller* (9 Pet., 672), where it is said:

It is a well-settled principle that the statute of limitations does not run against the State. If a contrary rule were sanctioned, it would only be necessary for intruders upon the public lands to maintain their possessions until the statutes of limitations shall run, and then they would become invested with the title against the Government and all persons claiming under it. In this way the public domain would soon be appropriated by adventurers. Indeed, it could be entirely impracticable, by the use of any power within the reach of the Government, to prevent this result. It is only necessary, therefore, to state the case in order to show the wisdom and propriety of the rule that the statute never operates against the Government.

If this principle is so closely guarded under our system of government, where the instrumentalities of government and the facilities for travel are so efficient to discover and to prevent any appropriation of public land to private use, how much more is its existence to be presumed in the case of a monarchy, with all its royal prerogatives and its sovereign attributes. This is especially true when it is reflected that the sovereign in this instance

was across the seas and his domain included vast and inaccessible territory, whose adverse occupancy by adventurers would not in all probability be brought either to his royal notice or even to the notice of his agents in the ultramarine provinces. Certainly, the reason of the principle as applicable to the Spanish provinces is so apparent as to make an assertion of its nonexistence a matter of skepticism, or at least of most careful scrutiny.

This subject is one which has engaged the attention of the courts of this country a number of times, and it is believed that any lack of harmony in the decisions as to the prescriptibility of public lands finds at least a partial explanation in the fact that most of these cases involve controversies as to the right of possession between individuals and in which deeds or grants have been presumed in aid of a long possession. The difference in principle between this class of cases and that in which the sovereign contends with subject asserting his title paramount to the soil is quite obvious.

Perhaps the most recent and thorough work on this subject is that entitled "Legislation and Jurisprudence on Public Lands," by Wistano Luis Orozeo, esq., of the Guadalajara, Mexico, bar, published in 1895. This publication has been quoted from by this court in several recent cases, notably in the *Santa Fe Case* (165 U. S., 710), and quotations therefrom have also been made in a number of briefs filed in this court in cases appealed from the Court of Private Land Claims, among them the case of *Ely's administrator v. United States*, reported in 171 U. S., 220.

In the supplemental brief for the Government in that case appear the following extracts from Mr. Orozco's work, which are reproduced as quite pertinent here:

The Crown of Spain, and afterwards the Mexican Government, always claimed and disposed of these overplus lands.

The first Spanish law we find on overplus lands is Law XIV, Title XII, Book IV, of the Compilation of the Indies, of Philip II, of November 20, 1578, March 8, 1589, and November 1, 1591, as follows:

"Inasmuch as we have fully succeeded to the seigniory of the Indies, and inasmuch as the vacant lands, soils and grounds that have not been granted by the Kings, our predecessors, or by Us, or in our name, belong to our royal patrimony and crown, it is necessary that all the land that is held without just and true titles, be restored to us, according and as it belongs to Us, so that, reserving, before all things, what should appear to Us, or to the viceroys, audiences and governors, to be necessary for parks, town commons, municipal domains, pastures and vacant lands for the places and councils that are populated, as well as with regard to what concerns the future and the increase they may have, and allotting to the Indians what they may have need for farming and for making their plantations and for stock-raising, confirming them in what they now have and giving them again what is necessary, all other land may remain and be free and unburdened to grant and dispose thereof at our will. For all of which we order and command the viceroys and presidents of the pretorian audiences, to set, when it shall appear to them convenient, a proper term for the possessors to exhibit before them and the ministers of their audiences, whom they shall appoint, the titles of lands, stock-

farms, Indian farms, and *caballerias*, and, after protecting those who hold under good titles and instruments or just prescription, the rest be returned and restored to Us, to dispose thereof at Our will."

Mr. Orozco, after quoting this law, Vol. II, page 1007, says:

"And Law XVII of the same book and title expressly declares that the public lands are a part of the royal exchequer. The same declaration is found in Chapter XIII of the royal instruction of October 15, 1754.

"Relying on the text transcribed, we can set down the principle:

"*The public lands in the Republic of Mexico are imprescriptible.*"

In his Volume II, Title III, pp. 993, et seq., entitled "Prescription," the learned author very thoroughly discusses the general propositions of prescription, including a full consideration of the two legal phrases very often argued against the views here urged, and in fact relied upon in the majority opinion of the court in this case. One of these phrases, the term "a just prescription," is found in the last part of Law XIV, Title XII, Book IV, of the Compilation of the Indies, and the other, referring to "a just title by prescription," is found in chapter 4 of the Royal Instructions of October 15, 1754.

Mr. Orozco, upon a full discussion of these expressions, demonstrates (article 2) that they have no application to a case such as is presented by this record, and that even if these had force they were repealed by the provisions of Law IX, Title VIII of Book II, of the Novisima Recopilacion, which provides that the royal lands and other

property (*bienes*) belonging to the royal treasury are absolutely imprescriptible and orders that the prescription can not be acquired even by time immemorial, which by the same law shall be considered interrupted and annulled. The Novisima Recopilacion having been approved and ordered observed as the law of the Spanish dominion by King Charles IV in a cedula dated July 15, 1805 (Orozeo, vol. 2, title 3, article 2), this was a declaration which interrupted the running of prescription from that date, if it even ran before against the Crown (*Weber v. Harbor Commissioners*, 18 Wall., 57, 71). As the continuous possession relied on by the court in its opinion (R., 39) originated from the time of Clemente Gutierrez in 1785, and the only proof of possession that can under a most favorable view be deduced from the record had thus run only twenty years prior to this cedula arresting any such possession as a basis for prescription, this claim under the proofs at that date lacked many years of the forty years which the court below holds to be the basis for prescription against the Crown.

But whether prescription did or did not run against the Crown, it is confidently submitted that a title resting on prescription is not such a claim as the Court of Private Land Claims has jurisdiction to confirm.

An even casual examination of the act of 1891 will show that its provisions do not confide to the Court of Private Land Claims the duty of confirming claims resting upon mere possession. Some of those provisions have been discussed above in connection with the proposition of proving grants by mere recitals in a deed. The views urged in that connection apply with even more

force to a claim based upon naked possession and the presumption of a grant following therefrom. Thus the provision of section 6 that "any person * * * claiming lands within the limits of the territory derived by the United States from the Republic of Mexico * * * by virtue of any such Spanish or Mexican grant, concession, warrant, or survey as the United States are bound to recognize and confirm," may present his claim, is utterly inconsistent with the theory that anything but a written muniment of title can constitute the foundation of a suit in the Court of Private Land Claims.

In *Lafayette et al. v. Blanc* (3 La. Ann., 59) the language construed was identically the same contained in this act, being "the title to lands claimed by virtue of incomplete French or Spanish 'grants, concessions, warrants, or orders of survey,'" and this was held by the court not to confirm any claim unsupported by written evidence of title emanating from the French or Spanish Governments. (See also *State v. Cardinas*, 47 Tex., 250.)

The act of 1891 is, in its description of the class of titles which it covers, very similar to the act of May 26, 1824 (4 Stat. L., 52), the wording of the latter being "by virtue of any French or Spanish grant, concession, warrant, or order of survey legally made, granted, or issued by the proper authorities." In cases arising under that act, as reenacted by the law of July 17, 1844 (5 Stat. L., 676), it was held that there was "no power to act upon evidence of mere naked possession, unaccompanied by written evidence, conferring or professing to confer, a title of some description."

United States v. Powers' Heirs, 11 How., 569.

United States v. Rillieux's Heirs, 14 How., 188.

The further provisions of the act of 1891 are still more conclusive of the proposition that the court can not proceed upon *mere* naked possession. Thus, section 6 further requires the petition to state the *date* and *form* of the grant, possession, warrant, or order of survey.

The act of 1824, above referred to, contained a like provision, and its purpose is discussed in *Moore's Case* (12 How., 216), where it is said that this is required "in order that it may be seen whether the officer making the concession or sale had power to do so at the time it was done." But, if grants may be confirmed on allegations and proof of mere possession, this provision of statute becomes nugatory and senseless, as thus the further provision of section 6, which requires that the petition state "by whom" the grant is made.

Further, under section 8, the section under which this claim is filed, permission to invoke the jurisdiction of the court is extended only to those holding under a *title* derived from the Spanish or Mexican Government. This *title* must be one "lawfully and regularly derived" from one of the governments just mentioned (subsection 1 of section 13), and not only that, but it must be made to "appear" that it is so derived. (*Hayes v. United States*, 170 U. S., 637.) It must further be made to "appear" that every condition and requirement, either antecedent or subsequent, contained in the original grant has been performed in the time and manner stated in such grant. All these provisions of the act of 1891 show that it was not intended to include claims resting upon mere possession; and the provisions of the statute

are equally exclusive of grants resting upon naked possession, whether such possession shall have extended back a half dozen years or a century before the treaty.

If there were any doubt upon this proposition it is, however, dispelled by the fact that Congress in the act of 1891 has not only withheld from the Court of Private Land Claims the power to recognize anything short of a paper title, but has actually confided to another department of the Government the power, under certain restrictions, to recognize and provide for possessory claims. Thus under section 16 of the act as amended by the act of February 23, 1893 (27, Stat. 47), provision is made for the protection of anyone who has "through himself, his ancestors, grantors, or their legal successors in title or possession, been in the continuous, adverse, actual, bona fide possession" of land for twenty years next preceding the time of survey of the township wherein situate. Under this section, upon making proper proof, such possessors of land may receive a patent therefor to an extent not to exceed 160 acres. A similar provision is made in section 17 of the act, as amended by the act of February 23, 1893, above referred to, for persons claiming title in townships already surveyed, who had been in "actual, continuous, adverse possession" of lands for twenty years next preceding such survey.

These two sections measure the degree of recognition which Congress is thus far willing to accord to claims resting upon mere possession, although such possession may have been sustained for years under the former government. To secure more liberal recognition parties must either present to the Court of Private Land Claims

"a grant, concession, warrant, or order of survey" lawfully and regularly derived from the Government of Spain or Mexico, with which they can connect themselves, or, if unable to do this, they must appeal to the legislative department of the Government.

II.

Even if there were a grant to one or both of these parties, claimants herein have not connected themselves therewith, so as to give the court jurisdiction of their claim.

That claimants have not connected themselves with either the alleged grant to Gutierrez or that to Sedillo, is discussed in the statement of the case above. From this it will be seen that the last mention of the Antonio Gutierrez title is in 1736, when as shown by archive 178, the northern portion of his claim was owned by Nicolas de Chaves, and the remainder by Diego Padilla. The last mention of Joaquin Sedillo's claim is also in 1736, when his property was owned by Nicolas de Chaves. When we next hear of this property it is nearly fifty years later, in 1785, when a portion of the land embraced in these two claims is mentioned as part of the assets of the estate of Clemente Gutierrez. Claimants herein de-raign title regularly from Clemente Gutierrez. There is nothing to fill in the gap of fifty years in the title, or to show how Clemente Gutierrez acquired this property. The court below seems to have proceeded on the theory that Clemente Gutierrez acquired the interest he held by inheritance from Antonio Gutierrez, basing this conclusion on the identity of names. There are several very serious obstacles to this proposition. One of them is the

fact that the name Gutierrez is one of the commonest in the territory of New Mexico, and to presume that Clemente Gutierrez was a lineal descendant of Antonio Gutierrez, because both were named Gutierrez, affords about as reliable a conclusion as that John Smith is a lineal descendant of William Smith because they both enjoy the possession of the great American cognomen. Another obstacle to the conclusion suggested by the court is the fact that claimants disclaim any ability to "present a conveyance from the original grantee or from his heirs, with which they are in any way connected." (R., 2.) If Clemente was an heir of Antonio, certainly the claimants, of all persons, ought to know it; and as they do not claim this to be a fact, the court below went quite a long distance in yielding to them a conclusion which they expressly disclaimed. A further and conclusive objection to deraignment of title by a presumption of heirship to Clemente Gutierrez from Antonio Gutierrez lies in the fact that, as shown above, the lands of Antonio Gutierrez did not, when last heard from, belong to him at all, but to Diego Padilla; so that even were Clemente his heir he would still not have inherited a foot of the property. Further, any speculative relationship between the two Gutierrezes hardly explains how the latter one acquired the lands of Joaquin Sedillo, which, when last heard from (in 1736), were claimed by Nicolas de Chavez. This alleged consecutiveness of title or possession from Gutierrez to Gutierrez, or even from Nicolas de Chavez and Diego Padilla to Clemente Gutierrez, is negatived by the very name applied to the eastern portion of this tract, "Bosque de los Pinos." This, as

pointed out in the statement of the case *supra*, means the "cottonwood grove of the Pinos," and indicates that the tract at one time belonged to or was held by some persons bearing the very common New Mexico name of Pino. The attempt to deraign title by inheritance must thus be abandoned, and any connection established must rest upon the presumption of deeds from the owners of the land in 1736, such that Clemente Gutierrez owned the property in 1785.

Whatever may ordinarily be the rule as to presuming deeds in chains of title in suits between individuals, it is respectfully submitted that that doctrine can have no application in a proceeding such as the present, where the Government submits to a suit against it upon explicit terms. One of the terms upon which suitors come into the Court of Private Land Claims is that hereinbefore discussed, by which it is provided that "no claim shall be allowed that shall not *appear* to be upon a title *lawfully and regularly derived* from the Government of Spain or Mexico." This provision is evidently intended to require that claimants shall not only show that the title they hold is one that lawfully originated with the Government of Spain or Mexico, but that it was regularly derived by them from one of those Governments. In other words, the question of whether, after establishing that a grant was made covering the premises, claimants hold under that grant is a matter not of conjecture but of proof. Otherwise all that a claimant has to do in order to get a confirmation covering thousands of acres is to find in the archives a paper title made to parties two hundred years ago, prove that he has been for a long time in possession

of a few acres of such a tract, and thereupon it becomes the duty of the court to confirm the whole grant. In the archives at Santa Fe there are a large number of this class of papers, and if all that a claimant has to do to take the title of the whole tract out of the Government is to prove possession of a part thereof, without connecting himself with the grant, or indeed proving that he claims under the grant, there will be little left of the public domain in New Mexico after the Court of Private Land Claims finishes its labors.

It is this very proposition that was met by the California tribunals in passing upon grants under the act of 1851. Thus in *McMicken's Case* (97 U. S., 208) this court says:

The petitioner claims as devisee of Charles McMicken under his will bearing date in 1855, which is set out in full in the record. An inspection of this will shows that the tract in question was not named in it nor devised in any way. * * * As the appellant does not pretend to have any other title than that of devisee under this will, it is difficult to see how his petition can be sustained. If this were an action of ejectment, there could be no question on the subject. But it is contended on the part of the petitioner that, whether his own title be properly deraigned or not, the court, satisfied of the validity of McMicken's title, might make a decree in favor of his legal representatives, for the benefit of whom it might concern. A decree in this form is often made against the Government in these land cases when a title is satisfactorily established and the parties prosecuting it connect themselves in some way with it so as to show some real interest to be protected. (*Castro v. Hendricks*, 23 How., 438;

Brown v. Brackett, 21 Wall., 387.) But a mere stranger to the title can hardly ask the court to go to that length. It is not for everyone who chooses to take up the prosecution of such claims without any connection whatever with the title sought to be established.

In the case at bar the facts are as consistent with the theory that Clemente Gutierrez held under possessory title as that he held under conveyance from the parties who claimed the property in the year 1736. At that time the country was overrun by Indians. Cristobal de Tapia had lost his title to the very same premises by abandonment or for some other equally conclusive reason, and it is thoroughly within probabilities to suppose that the owners of 1736 had done likewise. At any rate, in 1785 the heirs of Clemente Gutierrez do not assert that their father had title from the owners of 1736; but simply (R., 20) that "they have possession," or, as the Spanish more accurately translated is, "of which possession is held," and the same inventory says that "there is no title deed (*documento*) of its boundaries."

It was to cover this very contingency, among others, of inability to prove mesne conveyances (which under *Castro v. Hendricks*, 23 Howard, 442, must be produced to enable the board to determine if there is a bona fide claim before it under a Mexican grant) that led Congress to provide that such parties might, under sections 16 and 17 of the act of 1891, although lacking their titles, still retain their homes and ancestral possessions by proving possession of not less than twenty years "by themselves, their ancestors, grantors, or their lawful successors in

title or possession." It is to this department of the act that claimants herein must look for their remedy. Under this the several Indians of the pueblo of Isleta who have been occupying patches of ground on the west side of the Rio Grande for years may secure patent in severalty by virtue of their privileges as citizens (*United States v. Joseph*, 94 U. S., 614), and likewise Colonel Chavez may secure patent for his Bosque de los Pinos. This recourse is still available to them, since the time for filing under the small-holdings portion of the act of 1891 was extended by act of Congress approved June 27, 1898, to March 4, 1901. If the 160 acres allowed under this act is deemed by Colonel Chavez insufficient to satisfy such equities as he considers he is possessed of, his redress must come from Congress, not from the Court of Private Land Claims.

III.

Even if the proof be adjudged sufficient to establish a grant to Antonio Gutierrez and to Joaquin Sedillo, either or both, and even if the claimants herein be held to have connected themselves with such grants, the title conferred thereby was not complete and perfect at the date when the United States acquired sovereignty over the Territory of New Mexico; and the claims herein presented are therefore barred by the provisions of section 12 of the act of March 3, 1891.

Section 12 just referred to provides that all claims mentioned in the section 6 (i. e., those which were not at the date of the treaty complete and perfect) "shall, at the end of two years from the taking effect of this act, if no

petition in respect to the same shall have then been filed, as hereinbefore provided, be deemed and taken, in all courts and elsewhere, to be abandoned and shall be forever barred."

Section 8, which provides for the filing of claims for complete and perfect grants, does not contain this limitation. It may, however, be very seriously questioned whether this limitation does not apply to all claims presented to the Court of Private Land Claims. Otherwise parties alleging a perfect grant may file their petitions in court praying a confirmation on the very day the life of the court expires by limitation. While it is not, under section 8, incumbent on claimants of perfect grants to come into court, if they elect to come in they must do so within some reasonable time, and the whole machinery created by the act of 1891 indicates that the period contemplated is two years from March 3, 1891. If this contention be well founded, this claim, whether perfect or imperfect, was presented too late, having been filed on September 9, 1896.

But even if a perfect grant could be sued for after the two years' limitation imposed by section 12, it is respectfully submitted that this claim is barred, for the reason that it is not shown by the proof to be founded upon a perfect and complete title.

The imperfections of the Antonio Gutierrez grant paper have been already discussed, including the matter of juridical possession, the presence of which has been uniformly held essential to a perfect title. (*More v. Steinback*, 127 U. S., 70; *Graham v. United States*, 4 Wall., 259; *Van Reynegan v. Bolton*, 95 U. S., 33.) Likewise

as to the Joaquin Sedillo claim, the lack of proof has been considered at length. It is not intended to repeat that discussion under this heading, but simply to call the court's attention to the fact that even if claimants have established to either of these parties, such grant is imperfect and incomplete, for the reason that it is not shown to have been confirmed as required by the cedula of October 15, 1754. (Reynolds, p. 50.) As was said by the court below in its opinion on the Cañon de San Diego grant, made in 1788 (*Chaves v. United States*, 168 U. S. 177):

The law of Spain at the time this concession was made required that the land should be actually occupied by the grantees, and should be cultivated for the period of four years, as conditions of obtaining the legal title to the property. It was also required that proof should be made to the audiencia of the district of the fact of compliance with this law, and that the grant should be confirmed by the audiencia before the title could pass from the crown. The evidence before the court contains no hint that the Garcias cultivated any part of the tract for the required period, or that any proof of such cultivation had been made, or that the grant had been confirmed by any officer or body having authority in such matters. On the contrary, the evidence in the case tends to show that up to 1808 the grant had not been confirmed. Where a petitioner asserts that a title under which he claims land in this court is a complete and perfect one, we think the burden is upon him to show affirmatively the happening of those matters which are necessary prerequisites to the existence of a complete and perfect title.

A perfect title is one which does not require a further exercise of the granting power to pass the fee in the land. It is a title which conveys full and absolute dominion, not only as against all private persons, but as against the Government, and which may consequently not be disallowed by the political or granting power, and stands in no need of reaffirmance from such power.

Stevenson v. Burnett, 35 Cal., 432.

Doe v. Eslava et al., 9 How., 445.

Argument of Mr. Call, counsel for the United States, in the Clarke Case, 8 Peters, 705, et seq.

The policy of the Spanish Government requiring two authorities to concur before the fee vested and the title became "perfect and complete" dated from a very early period.

Thus, by law 16, title 12, book 4, Law of the Indies, promulgated June 16, 1617, before definite title to the public lands passed against the Crown, the acts of the colonial officers were to receive royal confirmation (2 White, p. 53; Hall's Mexican Law, sec. 26).

Under the royal ordinance of November 24, 1735, it was necessary for those who received grants to apply to the King himself for the confirmation of the same "under penalty of losing them if they should not do so." (Reynolds, p. 50.)

The expense and inconvenience of securing approvals and confirmations from the Crown was so great, especially to those living beyond the seas, as to lead to the institution of a more convenient method of obtaining definitive titles by Spanish subjects to whom concessions had been made. This was provided in the royal cedula

of October 15, 1754 (Reynolds, p. 50), wherein the evils connected with the former system are set forth and provision is made for the future alienation of Crown lands. Thus under that cedula the viceroy and presidents of the royal audiences were empowered to appoint subdelegates with authority to make sales and compositions of Crown lands in New Spain, and the subdelegates in their turn were also authorized to appoint deputies in distant provinces. It was further provided that the subdelegates should forward the original proceedings had by them on land locations to the audiences for approval, and when approved by the audiences the subdelegates issued the titles, which were then sent to the audiences for confirmation. In section 12 (Reynolds, p. 55) it is provided that "in provinces remote from the audiences or where the sea is between * * * confirmations shall be made by their governors, with the approval of the royal officers and acting attorney-general where there is one."

This system was subsequently displaced by that provided in the Ordinance of Intendants, dated December 4, 1786 (Reynolds, p. 59), which provided that officers of the Crown, called intendants, were empowered to make sales and compositions of the Crown lands in their several provinces. The original proceedings had by them were (article 81) to be forwarded to the superior board of the treasury for approval. The intendants issued the titles upon such approval, and the titles were again forwarded to the board for confirmation.

By the royal cedula of March 23, 1798 (Reynolds, p. 65), it was provided, upon considerations of economy and convenience similar to those recited in the cedula of

1754, that the transmittal of the final titles to the supreme board of the treasury for confirmation should be dispensed with upon the payment of 2 per cent of the price; but this provision did not dispense with the transmittal of the original proceedings had by the intendants, as required by article 81 of the ordinance above referred to.

A similar provision appears in the royal order of February 14, 1805 (Reynolds, pp. 68, 73).

These royal decrees, some of which were observed as in force up to the very date of the Mexican independence, have been considered in cases decided under the Louisiana and Florida acts and the construction uniformly given by this court in such cases has been that concessions unapproved by the proper authority constituted, not a perfect title, but an incomplete and imperfect title, depending, since the treaty for its completion, upon the action of the political authorities of the United States.

Thus the case of the *United States v. Arredondo* (6 Peters, 691) recognizes the difference between perfect and imperfect grants under the Spanish régime, in the following language (p. 717):

The whole legislation of Congress from 1803 to 1828 in relation to the three classes of cases, so far as respected Spanish titles, is of a uniform character in cases of corresponding description. The rules vary according to the kind of title set up. Distinctions have been made in all the laws between perfect or complete grants, fully executed, or *inchoate, incomplete ones, where a right had been in its inception under or by color of local law or authority, but required some act of the Government to be done to complete it.*

The case of *Menard's heirs v. Massey* (8 How., 293) was one involving a grant made on November 8, 1799, by the lieutenant-governor of Louisiana, but not approved by the intendant-general of the province. The court in discussing the dignity of the grant document presented says (p. 303):

That the lieutenant-governor of Upper Louisiana had the authority, as a subdelegate, under the intendant-general of the provinces of Upper and Lower Louisiana and Florida, to make concessions is undeniable. He could and did deal with the public domain of the province, made concessions, directed the land to be surveyed, and caused grantees to be put in possession. This, however, does not settle the question. It does not depend upon the existence of power, or want of power, in the lieutenant-governor, but on the force and effect of the right his concession conferred. Did it give such a vested title in the soil, as the Spanish Government could not legally disavow it? Or could the intendant-general, representing the royal authority, lawfully refuse to confirm the concession and order the grantee to be turned out of possession? If it be true that the title ended with the concession, survey, and occupancy of the land granted, then it follows that the title was completed and perfected under the Spanish laws by these acts; nor was a confirmation from any higher power than the lieutenant-governor at all necessary, the grantee having all the title that the King could give.

The court after considering the question of whether the approval of the intendant-general was necessary, in the course of which article 81 of the Laws of Intendants,

above referred to, is discussed, arrives at the following conclusion (p. 306):

The necessity of a further title than a mere loose order of survey, given by commandants of posts and lieutenant-governors and placed in the hands of the interested party, is too manifest for comment. Petitions were written by the party asking the land, or someone for him. The governor consented, usually by indorsement on the petition, and ordered that the petitioner should have the land and directed that it should be surveyed. The paper was handed to the petitioner, who might deliver it to the surveyor or omit it. If he presented it and the land was laid off, then it was the surveyor's duty to record both the concession and plat, together with the procès verbal. But this did not make the party owner; without the further act of the King's deputy—intendant-general—the title still continued in the Crown.

See also *Glenn v. United States*, 13 How., 250.

The titles to Gutierrez and to Sedillo, if ever issued, never having been returned to or approved by the governor "with the approval of the royal officers and acting attorney-general" (section 12 of cedula of 1754, Reynolds, p. 55) or by any of the other officers subsequently provided for by whom titles might be confirmed, were not at the date of the treaty "perfect and complete" so as to be cognizable under section 8 of the act of 1891.

The court below evidently was of opinion that the confirmation of this grant might be presumed from lapse of time. In so doing it evidently overlooked the fact that an essential ingredient of prescription, even against individuals, is "good faith and just title." A neglect of

a requirement of law, however, no matter for how long a time, could not constitute "good faith" so as to lay the foundation for a prescription curing such neglect.

As was said in *Deffeback v. Hawke* (115 U. S., 392, 407):

There can be no color of title in an occupant who does not hold under any instrument, proceeding, or law purporting to transfer to him the title or to give him the right of possession. And there can be no such thing as good faith in an adverse holding where the party knows that he has no title and that, *under the law*, which he is presumed to know, he can acquire none by his occupation.

The application of this doctrine to titles lacking confirmation under the cedula of 1754 is fully discussed by Mr. Orozco in his book above quoted from. In this discussion he says:

It may be asked if a title which lacks confirmation and annotation is sufficient to establish the right of prescription against the national treasury, that defective document serving as a just title.

He then goes on to answer this query in the negative in the language quoted by Mr. Justice Murray in his dissenting opinion in this case (R., p. 43, 44).

He concludes as follows:

As the requisite of "confirmation" was commanded by the law, ignorance that such requisite was necessary can not be alleged, inasmuch as ignorance of the laws of the country benefits nobody.

This is simply another way of putting the principle referred to by this court in *Hayes v. United States* (170 U. S., 651), that *juris error* is never a good foundation for prescription.

IV.

The form of the decree of confirmation by which the land lying east of the Rio Grande is confirmed to J. Francisco Chaves and that lying west of the present bed of the Rio Grande is confirmed to the Indians of Isleta is not justified by the record or by the act of 1891.

The fact that the record does not show Colonel Chaves to own all the land confirmed to him, or the Indians to own all the land confirmed to them, would seem sufficient to sustain the position just announced.

Granting that Clemente Gutierrez owned all of the Bosque de los Pinos in 1785, at his death the property went to his widow, Maria Apolonia Baca, who received one-half, and to his five children, Lorenzo Gutierrez, Lorenza Gutierrez, wife of Francisco Antonio Garcia, Maria Manuela de la Soledad Gutierrez, wife of Mariano de la Peña, Maria Luisa Gutierrez, and Juana Gutierrez, who each received one-tenth (archive 371, R., 20). By plaintiffs' Exhibit D the interest of Manuela de la Soledad Gutierrez—one-tenth—seems to have passed to the grandfather of Colonel Chaves. By Exhibit E the interest of Maria Luisa Gutierrez—another tenth—seems to have been similarly conveyed. By Exhibit F the interests of Lorenzo and Lorenza Gutierrez—each one-tenth—seem to have also passed, making in all a four-tenth's interest vested in the ancestor of Colonel Chaves. No conveyance appears of record from the widow of Clemente Gutierrez, who owned a half interest, or from Juana Gutierrez, the remaining child, who held a tenth. So, also, as to the Indians of Isleta, who (Exhibit G,

R., 27) were deeded lands on the west side of the Rio Grande by the administrator of the estate of the widow of Clemente Gutierrez. Assuming that the administrator had a right to sell land, he certainly could sell only the interest of his intestate, so that, as the children of Clemente Gutierrez did not join with their mother's administrator in this conveyance, the Indians became thereby the owner of only an undivided half interest. Further, their deed does not recite any west boundary, so that the finding that they are the owners to the *ceja* (ridge) of the Rio Puerco, which is some miles west of the Rio Grande, is unsupported by proof. The Court of Private Land Claims thus decreed that patent to the east part of this land should go to J. Francisco Chaves, when he showed on the trial title to only four-tenths of that portion, and that title to the west part should go to the Indians, although they showed at best only a half interest in a tract without east and west boundaries (Exhibit G, p. 27). Such a finding can hardly be sustained. If so, it is difficult to determine what is to become of the holders of the other interests belonging to the Gutierrez family. It certainly can not be that they are to be shut out by a decree giving the patent to the whole to the holders of only a half, and yet that is the effect of this decree.

It was to provide against just such a contingency as this that subsection 5 of section 13 of the act of 1891 was inserted, reading as follows:

No proceeding, decree, or act under this act shall conclude or affect the private rights of persons as between each other, all of which rights shall be preserved and saved to the same effect as if this act had

not been passed; but the proceedings, decrees, and acts herein provided for shall be conclusive of all rights as between the United States and all persons claiming any interest or right in such lands.

If the claimants herein had shown even an absolute and complete chain of title to the whole tract from the Crown of Spain, it would still have been the duty of the court under this provision to have confirmed the grant, not to the claimants appearing before it, but to the "assigns and legal representatives of the original grantee." This would leave the door open for other parties at interest to come into the local courts and show their interests under the confirmation, and even to question the conveyances by which the claimants in the Court of Private Land Claims sought to assert title to the whole or a part of the tract. To make a decree in any other form is to "conclude and affect the private rights of persons as between each other," and this the statute prohibits. The form of decree just referred to as the proper one is, it may be stated, the form followed by the court below in every other confirmation it has entered since its organization.

The fact that it pursued a different course in the present instance must be accounted for on the theory that it concluded that a decree of confirmation herein to the "assigns and legal representatives" of the original grantees would be a mere moot decision, since there was no one before it deraigning title from such grantees, and thus no one who would be benefited by such a decision.

This consideration demonstrates anew the proposition hereinbefore urged that there should be no confirmation

in this case, for the reason that neither of the claimants connect themselves with the alleged grantees.

In conclusion of this brief it seems proper to add that the Government does not deny that the claim herein presented is possessed of some equities; and were the court below one of general equitable jurisdiction, unhampered by statute and vested with plenary power to recognize all demands upon the equitable consideration of the Government, there might be a confirmation for at least a part of this not inconsiderable claim of twenty-five or thirty thousand acres. To confirm upon these petitions, however, this court must first presume a grant, must thereupon presume a confirmation of that grant so as to make it a perfect title, and finally must presume a regular deraignment of interest therefrom. In the language of this court in the case of *Bergere v. United States* (168 U. S., 75), "this requires an entirely too free use of presumptions."

It is respectfully urged that the decision of the Court of Private Land Claims should be reversed and claimants relegated to the tribunal provided by sections 16 and 17 of the act of 1891, where they belong.

Respectfully submitted.

JOHN K. RICHARDS,

Solicitor-General.

MATTHEW G. REYNOLDS,

Special Assistant to the Attorney-General.

WILLIAM H. POPE,

Special Assistant to the Attorney-General.

TRANSLATION OF ARCHIVE 769.

**YEAR OF 1750. PETITION OF THE HEIRS OF DON ALFONSO
RAEL DE AGUILAR THAT THEY BE GIVEN POSSESSION
OF AN OLD GRANT OF LANDS.**

To the Governor and Captain-General:

The heirs of Major Don Alfonso Rael de Aguilar being Eusebio Rael de Aguilar, Juan Rael de Aguilar, Antonia Teresa Rael de Aguilar, Francisca Rael de Aguilar, and the children of the deceased Alfonso Rael de Aguilar, and the children of Feliciana Rael de Aguilar, now deceased, all, and in their name, the four brothers and sisters now living, at the feet of your excellency say: That by the death of our deceased father we were left with a grant of lands which he acquired by grant which in the name of His Majesty was made to him by the Marquis Don Diego de Vargas, who was Governor of this Kingdom, its conqueror, and our deceased father being one of the conquerors who were in this Kingdom at the time of the conquest; with due formality we present before your excellency the grant, which is the place of Los Cerrillos, with its pastures, waters, woods, and watering places as they were settled by our deceased father; that in the year of ninety-six a portion of this Kingdom having rebelled, by order of the governor our deceased father left the said Cerrillos, where he lived four years, and built houses which can be proved to-day, since their ruins remain; and it is a matter of fact that he did not leave us any other piece of land other than the said Los Cerrillos, and (it is also a matter of fact) that within the last years they have been used for the pasturage of the horses of this royal garrison, to which we all say, let them graze there and welcome for all the time which may be necessary

and none of us will object except in regard to the cultivated lands—that there is room for all; and we ask your excellency to bear it very much in mind that we are very loyal vassals of His Majesty, and legitimate children of one of the conquerors, and that Juan Rael de Aguilar, one of the heirs, is to-day in this city and that he has his family in Chihuahua because he has not in this Kingdom a piece of land, and so soon as your excellency may be pleased to grant us the said land, he will bring his family to this Kingdom, for all of which:

We ask and pray that your excellency will grant that which we ask, which is what we expect of the justice of your excellency, and we pray and swear in due form that this our petition is not in bad faith and in that which is necessary, etc.

JU. RAEI DE AGUILAR. [RUBRIC.]

FELIPE TAFOYA, [RUBRIC.]
Procurador.

* * * * *

SANTA FE, April 25, 1750.

Let these parties present the titles and grants which they mention.

VELEZ. [RUBRIC.]

To the Governor and Captain-General:

The ensign Don Alfonso Rael de Aguilar, a soldier and civil and military secretary of this kingdom of New Mexico by appointment of your excellency, before whom I appear and state that in view of the fact that this kingdom of New Mexico is already subjugated and conquered, it having cost your excellency much vigilance, care, and treasure, I register a tract called Los Cerrillos, which is from four to five leagues from this town of Sante Fe, of which in the name of His Majesty will your excellency make me a grant as one of the conquering soldiers who

have come with your excellency; which tract I ask for with its entrances and exits, usages and customs, with waters, pastures, and watering places, just as it was held by the former settlers thereof.

I ask and pray, with proper humility, that your excellency will be pleased to concede and make me grant of said tract, in the name of His Majesty, on account of my being a poor married man with children, and expect of your excellency that you will grant me what I have asked for; and I swear with due legal formality that this my petition and registry is not in bad faith, and whatever is necessary, etc.

ALFONSO RAEEL DE AGUILAR.

At this military garrison and said place of the town of Santa Fe, kingdom of New Mexico, on the eighteenth day of the month of September, of the year one thousand six hundred and ninety-two, before me, Don Diego de Vargas Zapata Lujan Ponce de Leon, governor and captain-general of this said kingdom and its lands and provinces for His Majesty and castellan of his forces and garrisons, it was presented by the party therein named, who is a soldier at this garrison, and my civil and military secretary, and in view of his services and the loyalty with which he has served, and the love he has shown toward His Majesty, I, said governor and captain-general, make to him, in the name of His Majesty, grant of the lands, with their pastures, waters, woods and watering places, usages and customs, and whatever pertains thereto, in order that he may enjoy it according to his will, for himself and his heirs, by the will of God our Lord and that of the King our lord, in whose royal name, and in view of his merits and services, I make to him the said grant. And in witness thereof I signed it with two witnesses, who were the captain and ensign of this garrison, and I returned to him this said petition and the decree of grant therein contained in the presence of

Major Don Fernando de Chaves and Captain Antonio Jorge, citizens of this said kingdom and assistants who have served in said conquest.

DON DIEGO DE VARGAS ZAPATA LUJAN PONCE DE LEON.

ROQUE MADRID.

JUAN DE DIOS LUCERO DE GODOY.

It agrees with its original, to which I refer, from which I, General Don Juan Paez Hurtado, deputy governor and captain-general, caused it to be transcribed literally, upon the petition of the party, on account of the original grant being very much damaged. It is certain and true, corrected and amended; and there were present as instrumental witnesses, and to see it copied, Sebastian de Apodaca, Domingo Valdez, and Lucas Moya, all citizens of this said town, I acting as special justice, with my attending witnesses, for lack of a public and royal notary, of which there is none in this kingdom, on the present paper, because of there being none of any stamp in these regions. I certify.

[Signed] JUAN PAEZ HURTADO. [RUBRIC.]

Witness:

[Signed] DIEGO DE UGARTE. [RUBRIC.]

Witness:

[Signed] MANUEL TENORIO DE ALBA. [RUBRIC.]

SANTA FE, April 27, 1750.

Having examined the petition of these parties and the certified copy of the grant which they present, I, Don Tomas Velez Cachupin, governor and captain-general of New Mexico and castellan of its royal garrison, in view of the nullity of the instrument, because the possession and the settlement of the plain of Los Cerrillos do not appear in the same, nor the power of Don Juan Paiz Hurtado to give a certified copy of the grant purporting

to be original, and that so many of the governors, my predecessors, have not permitted the said places to be settled nor held (possessed) by any citizens, because of their being commons for the pasturage and support of the many horses of this royal garrison, and it being the place nearest to it for dispatching at the shortest notice any expedition needed for the royal service and defense of these dominions, I ought to order, I, the said governor, that that which these parties ask shall not be entertained nor permitted, of which the alcalde mayor of this city will notify them and will ask for the old original grant, which with this memorial and decree he will return to my possession; and I thus provided, ordered, and signed, acting with my assisting witnesses, to which I certify.

TOMAS VELEZ CACHUPIN. [RUBRIC.]

Witness:

JUAN ANTO GONZS. DEL PERAL. [RUBRIC.]

Witness:

THOMAS DE ALVEAR Y COLLADO. [RUBRIC.]

In the United States Court of Private Land Claims,
Santa Fe, N. Mex. June term, 1898.

MARIANO S. OTERO }
v. } No. 92. Jose Garcia Grant.
UNITED STATES. }

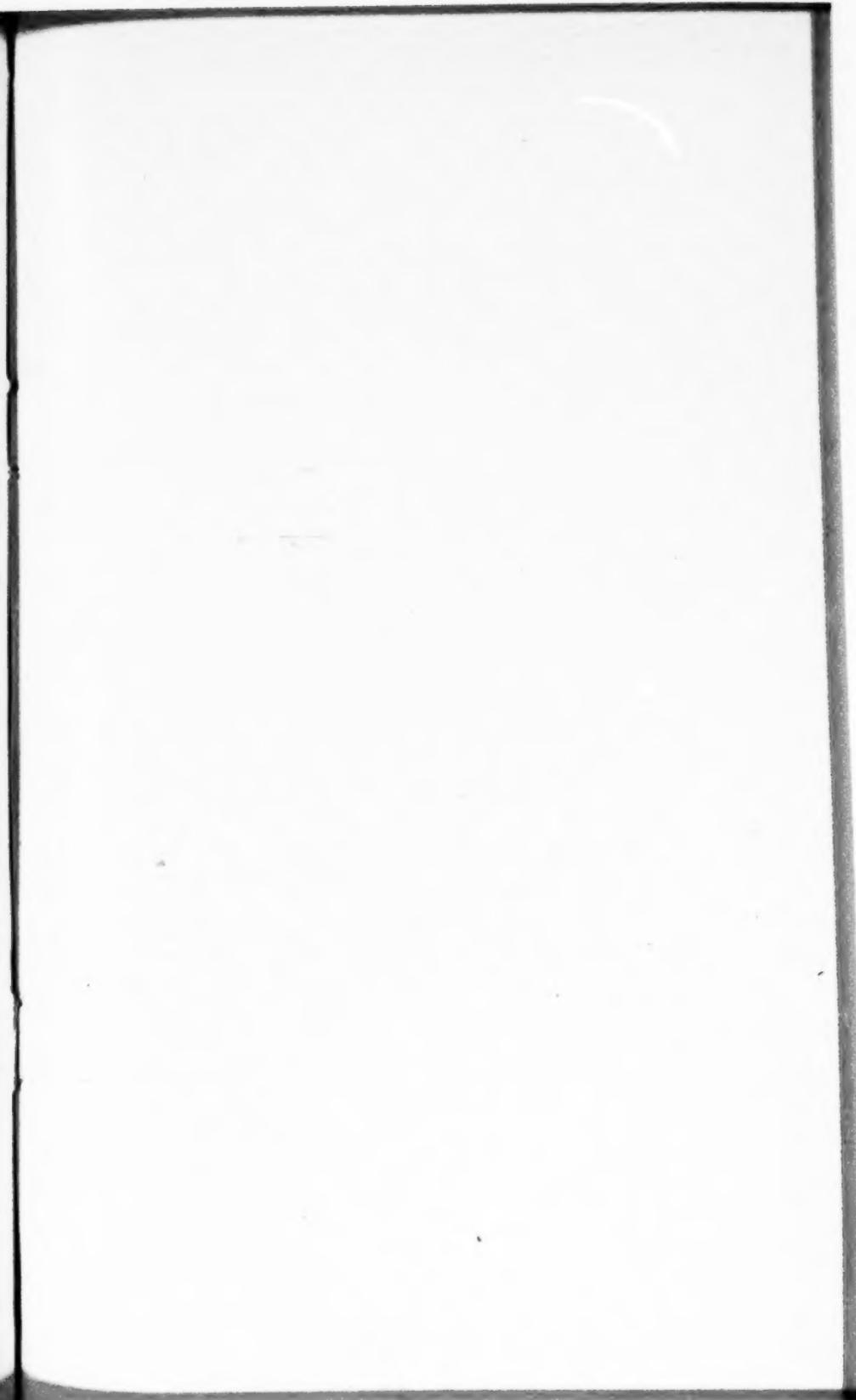
On July 5, 1898, the court delivered the following opinion by Fuller, A. J.:

In this case the court decided at the May term, 1897, that the plaintiff had established a perfect grant and was entitled to a confirmation of the land which was embraced in certain boundaries, in the opinion given. The plaintiff was dissatisfied with the boundaries and applied to the court for a rehearing, which was granted. At this term the case has been reheard fully. Since the delivery

of the opinion in this case, the Supreme Court has decided the case referred to by Mr. Justice Murray in the opinion he has just delivered, of *Martin B. Hayes v. The United States*, for the Antonio Chavez grant, in which the court put a construction on the clauses of the act constituting this court, therein referred to as being different from the Florida act and the California act; it is therein declared to be the duty of this court to be satisfied that the granting authority was an authority that had proper power to grant. Now, in this case the plaintiff asks for the confirmation of a grant which he alleges was made some time prior to the year 1762. No more definite date is fixed than that. The language is that "a grant was made some time prior to 1762." The grant is alleged to have been made, juridical possession given, recorded, and the record is lost, and the grant is lost; an effort is now made to set it up as a lost grant. The only documentary evidence adduced is that there are three, or perhaps four, other grants lying contiguously, which call for the boundaries of the Jose Garcia grant; and that of the Jose Garcia grant of lands there is as much evidence of possession common to the public at large as he and his successors had for grazing purposes, and that is all the evidence that is adduced. There is no evidence showing or tending to show the character of the grant—whether it was a grant absolute, as alleged, or whether it was a grant upon conditions, and, if so, whether these conditions were performed, or whether the grant was for the mere purpose of pasturage. As to the character of the grant there is no evidence at all. We are therefore unable, according to the rules prescribed by the decisions of the Supreme Court of the United States, to find that the plaintiff has made good the allegations of his petition. His grant is therefore rejected and his petition is dismissed.

THOMAS C. FULLER,
A. J., C. P. L. Claims.





IN THE SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1899.

NOS. 38 AND 39.

UNITED STATES,
Appellant,
vs.
J. FRANCISCO CHAVEZ. } From Court of Private Land Claims.

STATEMENT OF FACTS.

These two cases were tried together in the court of private land claims, the trial resulting in one decree of confirmation covering both claims, so that a single record might have sufficed to bring up both cases. The two records on file in this court are identical so far as the proceedings on the trial, the evidence, the decree and the opinion of the court are concerned. It will be apparent upon a review of the facts that the cases could not well have been tried otherwise than as one case.

The claimant Chavez, his father and grandfather, and their predecessors in title, are shown by the evidence to have had possession of the land which he

claims, continuously ever since some time prior to the year 1785. So long continued had been this possession that claimant actually did not know what was the original title from the government of Spain under which the land had been held; but he believed until shortly before the time when the cases were filed in the court of private land claims, that his title originated under another and different grant, which adjoins the more southerly one of the two set up in these cases. It is seriously urged by the government that this lack of knowledge and mistake on the part of claimant, furnish a reason for rejecting these claims.

In the brief of counsel for appellant, reference is made to another case which had been tried not long before these cases were filed, and there is a suggestion of a desire to go somewhat outside of the record in order to indicate the inconsistent claims of this appellee, as he had sought first to obtain a confirmation of the other grant including within it the land now asked for, and failing in that attempt thereafter presented these cases as the foundation of his title. There is no disposition on the part of appellee to prevent the court from getting all the facts before it, and, indeed, under the statute this court could, if it saw fit, order the taking of additional evidence. There will be no disagreement, however, between opposing counsel in this case as to matters of fact, and it is proposed therefore to begin this statement with some account of the case first presented as naturally leading up to the case now under examination.

In July, 1716, Ana de Sandoval y Manzanares presented her petition to the governor and captain general of New Mexico, setting forth her destitute circumstances, being a widow and burdened with children, and asked for a tract of land called San Clemente, which she had had by inheritance from her

father. This land was described as extending from the Rio del Norte on the east to the Rio Puerco on west, and as bounded on the north by lands of Cristobal de Tapia. The governor granted her the land for which she asked, referring to the fact that the land had belonged to her father who had been compelled to abandon it on account of the insurrection of the year eighty. In this statement he referred to the Pueblo Indian revolution of the year 1680, at which time the Spaniards were entirely driven out of the country and did not return until about 1692. Practically all of the land titles of that earlier time were terminated by the insurrection, but in a number of cases, as in this one, when grants were asked in the early part of the eighteenth century, references were made to the lands having formerly belonged to ancestors of the petitioners or to other persons.

The governor also directed Captain Antonio Gutierrez to place the petitioner in possession of the land, which that officer proceeded to do on the 23rd day of July, 1716, giving the same boundaries as those set up in the petition, with the exception of the boundary on the north which he declared to be a ruin a little above the Pueblo of San Clemente.

The papers showing this grant will be found at pages 30 to 33 of the printed records.

In the year 1747 the archives show that one Domingo de Luna was living on this grant made to Ana de Sandoval, having purchased portions of the land from heirs of the original grantee, and Lunas have lived on the same land continuously from that time down to the present, there being a town called Los Lunas on the grant, which is the county seat of Valencia county.

In the year 1871 the claimants of interests in this property presented the grant to the surveyor gen-

eral of New Mexico, by whom it was favorably reported to congress; and subsequently, in the year 1877, a survey of the claim was made under the direction of the surveyor general of New Mexico which made the northern boundary of the grant practically coincident with the southern boundary of the previously patented grant to the Indian Pueblo of Isleta, and extending across the present Rio Grande del Norte in its northern portion to an old river bed as the eastern boundary. In 1716 the river ran some distance to the east of its present course as is shown roughly on the sketch maps which appear in each of the records in these cases. It appears to have become the general belief that the grant to Ana de Sandoval covered all of the land between the Nicolas Duran de Chavez grant on the south, and the Isleta grant on the north. The land claimed by this appellee lies between the old and the new river beds and was believed by him to belong to the same grant as that under which the Lunas held their lands. So believing, he instituted in his name proceedings in the court of private land claims to obtain the confirmation of that grant. When the case came on for trial the government presented from the archives of the Spanish and Mexican governments in the office of the surveyor general for New Mexico, archives numbered 315 and 178, which showed the fact that there were two grants between the Ana de Sandoval grant and the Isleta grant, and that possibly all of the land claimed by Colonel Chavez fell within those grants. The court thereupon permitted an amendment so as to make Mr. Solmon Luna co-claimant with Colonel Chavez, and Mr. Luna clearly traced title to portions of the grant back to heirs of the original grantee from whom purchases had been made by his direct ancestor prior to the year 1750. Confirmation of the grant was had, but the land which the government had shown to be embraced within the two grants

above referred to was excluded from that confirmation, and all of the land of Colonel Chavez was so excluded. Thereupon he promptly filed the two cases now under examination, in the court of private land claims, relying substantially upon the same evidence which he had presented in support of his claim in the first case to show his title to the land which he claimed. He indicates in his testimony at page 10 of the printed record that he knew nothing about these two grants, except from the papers and the argument which had been made at the preceding term of court. It will be seen that these titles were relied on by the government in the earlier case to defeat the claim which was made to a very considerable tract of land as to which possession had been held, as hereinbefore stated, from some date prior to 1785.

The evidence in the first case showed with regard to these two grants, much the same condition as is shown by the evidence in these two cases, and will now be briefly set forth:

On the 5th of November, 1716, Captain Antonio Gutierrez, the same person who had delivered possession of the Ana de Sandoval grant in July of that year, petitioned the governor and captain general for the grant of a tract of land below Isleta, which formerly had been held by Cristobal de Tapia, setting forth the boundaries as being on the north an arroyo of cotton wood trees which came down from the hills, on the south the Pueblo of San Clemente, on the east the Rio del Norte, and on the west the hills of the Rio Puerco. Cristobal de Tapia was undoubtedly owner of the land before the insurrection of 1680, and like almost all of such owners, all record of his title had been destroyed, although the memory of his possession still remained. The governor in the name of the king made to the petitioner the grant for which he asked, as he described it, and directed Cap-

tain Baltazar Romero to put the petitioner in possession. No act of juridical possession appears in the archives, but other documentary evidence from the archives shows that Gutierrez undoubtedly received possession of the land and transferred it to Diego Padilla, who in the year 1734 conveyed it to Diego Borrego, as will appear by the conveyance which will be found on page 16 of the printed record, as a part of archive No. 178.

In this archive first appears evidence of the existence of the grant to Joaquin Sedillo, which is the beginning of the title set up in the case numbered 208. In the conveyance of Padilla to Borrego the land is described as bounded on the north by lands of Joaquin Sedillo. It is clear from the wording of this conveyance that Padilla held the whole of the land of Gutierrez and conveyed it all to Borrego, and he declares that he has the title papers of the whole tract. The contention of appellants that he did not convey it all to Borrego is not well founded, and even if correct, would be immaterial.

A part of the same archive is another conveyance to the same Borrego by Antonio Sedillo, legitimate son and heir of Joaquin Sedillo, transferring a tract of land which he declares to have been acquired by his father in part by grant from the king and in part under royal sale, as shown by five instruments which he delivered. This does not mean, as suggested by counsel for the government, that there were five purchases of five tracts of land. It might with equal propriety be argued that the five instruments were five different grants from the king. The reasonable construction is that some of the instruments delivered showed a grant or grants, and some of them showed a purchase. The land thus conveyed was bounded on the north by the lands of the Isleta Pueblo, on the east by the Rio del Norte, on the south

by a twin alamo called by some people the *alamo de la culebra*, and on the west by the *ceja* of the Rio Puerco.

The indications are, so far as any conclusion can be clearly drawn from these conveyances, that Diego Borrego in 1734 acquired the title to all of the land included between the lands of Isleta and the lands of Ana de Sandoval y Manzanares, and in 1736 conveyed

it to Nicolas de Chavez
So far as the archives disclose there is a gap in the chain of title between 1734 and 1785 when official proceedings were had as to the inventory and partition of the property of Don Clemente Gutierrez. In that inventory was included, as will appear by reference to page 20 of the record, a ranch below the boundary of the Pueblo of Isleta commonly called San Clemente, Barrancos and Los Pinos, of which there had been possession, although there was no deed showing its boundaries. It is not known whether the river had changed its course prior to this time or not, but probably it had. The portion of the land in question known as Los Pinos in this inventory, lies between the old and new river beds and is the portion claimed by this appellee. This portion had acquired the name of Los Pinos or the Bosque de los Pinos, at some time between 1734, when it was conveyed to Diego Borrego, and 1785 when the inventory of the property of Clemente Gutierrez was made. This seems to indicate that a family named Pino had, at some time during this interval, owned or occupied the place.

The proceedings as to the estate of Gutierrez show a division of the land in question, one-half to his widow, Apolonia Baca, and one-tenth to each of five children. Beginning in the year 1818, Francisco Xavier Chavez, the grandfather of J. Francisco Chavez, began the purchase of the lands of the Bosque de los Pinos from the heirs of Gutierrez, as will ap-

pear by reference to plaintiff's exhibits D, E, and F, which clearly show the acquisition of four-fifths of the title of the Gutierrez family to these lands. Counsel for the government urge that the deeds show the acquisition of only four-tenths, but they forget that the children of Clemente Gutierrez were equally the children of his widow, Apolonia Baca, and had inherited their mother's share of the property before the first deed in 1818, which indicates that she was dead before that time. There is no evidence as to what has become of the interest of the fifth child of Clemente Gutierrez, but there can be no doubt of the continuous, notorious and undisturbed possession of the Chaves family under the title obtained from the heirs of Gutierrez.

In the case first tried of the Ana de Sandoval grant there was also put in evidence certain documents which do not appear in the present case, relative to disputes between Francisco Xavier Chavez, in 1824, and his neighbors on the south, at the place called Peralta, who had bought land from the Indians of Isleta; and also a like dispute between Mariano Chaves, the father of J. Francisco Chavez, and the same people in the years 1835 and 1836. The result of both these suits was in favor of the Chavez people and the establishment of their boundary line at or near the south side of the old river bed. In the proceedings of 1836 the titles of the respective parties are quite fully set out by the alcalde in his record, and it appears that the Indians of Isleta had, about the middle of the last century, purchased the lands of certain Padillas which extended from the river on the west, to the mountains on the east, and in the year 1795 or 1797, sold the southern portion of that land to the people who built up the settlement or town of Peralta. These Padillas were the heirs of Diego Padilla, who had a grant of land lying east and south of the Bos-

que, on the opposite side of the river. It is to be noted that as early as 1836 the course of the river had been changed for so long a time that the fact had become obscured in the memories of men, inasmuch as the alcalde criticises the Isleta Indians for appearing to convey more land than they really owned because they gave the western boundary as the river when, of course, that boundary should have been construed to mean only the old river bed. Reference is made in these proceeding to the acquisition by the Chavez family of the title to the lands from the heirs of Gutierrez, and it is clearly shown that the Chavez title to the Bosque de los Pinos was then complete. Copies of these papers are printed herewith.

In some of the deeds to Francisco Xavier Chavez, the southern boundary of the land conveyed is given as the lands of Los Lentes. By reference to the sketch map in the printed records it will be seen that there is a settlement called Los Lentes on the west side of the river. Los Lentes was an off-shoot from the Pueblo of Isleta, and was originally settled by Indians who had purchased lands from other people, and the Chavez deeds indicate that what were known as the Lentes had lands on both sides of the river. Lente or Ente appears to have been an Indian family name.

The result of the prosecution of the claim for the Ana de Sandoval grant was a confirmation which fixed the northern boundary at a point about three-quarters of a mile north of the chapel of Los Lentes, thus excluding the lands between that point and the Isleta grant, the court being convinced by the evidence presented on behalf of the government that that land belonged to the successors in interest of the titles of Antonio Gutierrez and Joaquin Sedillo which had in 1734 become united in Diego Borrego, and was a part of the estate of Clemente Gutierrez at his

death in 1785, and subsequently passed to the possession of the Indians of Isleta on the west side of the river, and to the Chavez family on the east side.

Having thus been instructed by the government as to the true source of his title, J. Francisco Chavez instituted in the court of private land claims these proceedings to secure to himself the land which appeared to have been held in private ownership from some period prior to 1734.

Upon the trial of these cases in the court of private land claims, as will be seen by inspection of the record, no evidence was offered on behalf of the government, and there can be no dispute as to the facts. It is probable that the evidence on behalf of the claimant was not as full and complete as it might have been had there been any substantial contest upon the trial. The findings of fact by the court are substantially the same as what is herein set out as will appear by reference to pages 35 and 36 of the printed record.

POINTS AND AUTHORITIES.

I.

The proofs are sufficient to sustain the confirmation.

Before attempting to answer a portion of the arguments of counsel for appellant as to the testimony, we will endeavor to state briefly what was proved in the court below. It is to be kept in mind that the government offered no testimony whatever, and there can be no dispute as to the facts.

The two cases should be treated here as they were in the court below, as one claim for a single tract of land. The proofs clearly show:

1.—A grant to Antonio Gutierrez, in 1716, of the southern portion of the tract, adjoining the grant to Ana de Sandoval. (*Record, p. 11.*)

2.—The ownership of the northern portion between the Antonio Gutierrez grant and the Is-

leta grant, at some time prior to 1734, by Joaquin Sedillo, who held a part by grant and a part by purchase. (*Record, pp. 18 and 16.*)

3.—The conveyance of the southern portion by Diego Padilla to Diego Borrego, January 7, 1734. (*Record, p. 16;*) of the northern portion by the heirs of Sedillo to said Borrego, January 11, 1734. (*Record, p. 18;*) and of the whole tract by Borrego to Nicolas de Chavez, August 16, 1736; (*Record, p. 13.*)

It should be here stated that these conveyances are not in evidence for the purpose of showing title in the appellant, but to show that in 1734 and 1736 the land was private property and the subject of sale and transfer under official supervision and sanction.

4.—The ownership of the whole tract by Clemente Gutierrez prior to his death in 1785. This is shown by the inventory and distribution of his estate, made by Governor Juan Bautista de Anza. (*Record, p. 19 et seq.*)

5.—The sale of at least four-fifths of the portion of the land between the old and new river beds by heirs of Gutierrez to Francisco Xavier Chavez, grandfather of appellee, beginning in 1818, and unbroken possession ever since by the Chavez family. (*Record, pp. 7-8 and 23 to 26.*)

6.—The open and notorious possession and use by the Pueblo of Isleta, of lands on the west side of the present river from the boundary of the pueblo lands to the north boundary of the Ana de Sandoval grant, as far back as the memory of the oldest man in the pueblo can extend, such possession having been claimed to be under purchase from the heirs of Clemente Gutierrez. (*Record in No. 207, p. 10.*)

7.—That the possession of Clemente Gutierrez and those claiming under him has been continuous and unbroken from some date earlier than 1785 down to the present time.

From these undisputed facts, the court is justified in holding:

1.—That before 1734 all of the land had been segregated from the royal lands of Spain and that

the title had vested in Antonio Gutierrez and Joaquin Sedillo;

- 2.—That the private ownership and possession shown to exist in 1734 and 1736, in accordance with a familiar rule, in the absence of proof to the contrary, continued;
- 3.—That the ownership and possession by Clemente Gutierrez were lawfully acquired, although direct documentary evidence cannot now be had;
- 4.—That the title to the land, under the Spanish law of prescription, was complete and perfect in February, 1848.

It seems necessary briefly to make answer to some of the arguments of special counsel for appellant, as to the sufficiency of the proofs in these cases.

No attempt will be made to follow that argument in all its details as set forth in the printed brief on file, but merely to touch upon some of the more salient points.

It must be said, first, in a general way, that many of the difficulties and objections raised by appellant's counsel, grow out of a misconception of the meaning of one clause in the act creating the court of private land claims. The clause is to be found at the beginning of the first sub-section of section 13 of the act, which declares that "No claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the government of Spain or Mexico." This clause clearly declares a fact to be proved, but it lays down no rule as to how proof of the fact shall be made. Counsel for the government evidently consider that this clause declares a rule of evidence, and that its effect is to deprive claimants of the benefit of anything except direct, positive, proof and unmistakable record evidence of the grants under which they claim. No presumptions of the kind which are ordinarily considered integral and inseparable por-

tions of the law of evidence, can be indulged on behalf of the claims to be tried by the newly-created court. A statement of this position sufficiently indicates its absurdity, and counsel for the government will declare that they have not taken, and do not intend to take, any such position. It is respectfully submitted, however, that the printed argument as to the insufficiency of the testimony in these cases, is unconsciously based on this erroneous position, and that it will appear upon careful examination that counsel confuse the thing to be proved with the mode and character of proof, make the end to be attained stand for the means to reach that end, and the destination appear to be the road to that destination.

Great stress is laid by counsel for the government upon the failure to produce from the archives of the Spanish government the act of possession to Antonio Gutierrez and the grant to ~~Antonio~~ Sedillo, and it is stated that no attempt was made to account for their absence. During the earlier part of the existence of the court of private land claims direct proof was made in a number of cases of the repeated spoliation and destruction of papers belonging to the Spanish and Mexican archives both under the Mexican and American governments. While direct proof was made of these facts, yet they were so connected with the history of the country that the court might well have taken judicial notice thereof without any evidence; but the facts were so fully shown that practically the court has taken notice of them in probably half of the cases which have been tried. We ask this court now to follow the same course, and not to punish the present claimant on account of the incomplete and imperfect condition of the Spanish records. Every one familiar with conditions in New Mexico knows that those records are incomplete and imperfect, and that many grants have not even been presented to

the court of private land claims on account of the loss of documentary evidence by which to prove them.

U. S. vs. Chavez, 159 U. S., 462.

The absence of these papers from the records is, however, fully supplied by the evidence from the same records which shows that in 1734 the land was in possession of the successors in interest of both Gutierrez and Sedillo and was at that time the subject of purchase and sale. This is strengthened also by the evidence of the action of the governor of New Mexico in 1785 in making the inventory and distribution of the estate of Clemente Gutierrez involving the whole of the land claimed in these cases. Attention is particularly called to this for the reason that it is urged by counsel for the government that these claims are imperfect because no proof is adduced of their having been confirmed by the governor of New Mexico in accordance with the requirement of the royal cedula of October 15, 1754. The action of the governor in 1785 gives strong ground for the belief that the title was confirmed at that time if it never had been before. What is said in the brief for the government at page 46 about intendants, can have no bearing in this case, as New Mexico was never brought under the jurisdiction of any intendant, but, on the contrary, was specially excepted from the intendancies and its control by a governor distinctly preserved.

Ordenanzas de Intendentes. Art. X.

Counsel for the government, ignoring the well-recognized facts as to the defective condition of the Spanish archives, and urging that the absence of the juridical possession of Antonio Gutierrez is fatal to the claim, print as an appendix to their brief, a portion of archive No. 769 from the office of the Surveyor General of New Mexico, in which Governor Cachu-

pin in 1750 refused the revalidation of a grant because the possession was not made to appear. This is quite extraordinary, in view of the fact that in 1788 the heirs of the original grantee, Alfonzo Rael de Aguilar, renewed their application for the land which had been granted to their ancestor, and Governor Fernando de la Concha granted what they asked and put the heirs in possession of the land, which was 2,500 varas in width, dividing the tract into three portions of 833 varas each, from which it would appear that there were three equal heirs of the original grantee. This grant has been presented to the court of private land claims and has been confirmed. A portion of the papers will be found in *Mis. Doc. No. 181, House of Representatives, 42nd Congress, 2nd Session*, at page 101 *et seq.*

If the action of Governor Cachupin in 1750, as is urged at page 17 of the brief for the government, "is most instructive as a contemporaneous construction by the chief official of the province of the necessity for juridical possession," the later proceeding by Governor Concha, disregarding and reversing the action of his predecessor, is even more instructive as throwing light upon conditions as they existed in New Mexico in the last century—conditions so obscured by lapse of time and loss of records as to make it exceedingly difficult for us at the present day to get at the *real* facts and fully to understand the nature and value of titles as they then existed. This difficulty has been, in more than one case, forced upon the attention of this court.

Ely's Administrator vs. U. S., 171 U. S., 223.

U. S. vs. Peralta, 19 How., 347-8.

It is also urged against these grants that it is not clearly shown what were their nature and character, and whether they might not have been made upon

conditions subsequent, proof of the performance of which is a prerequisite to a confirmation. So far as we know, conditions such as are referred to, were limited to a period of but a few years after the making of a grant and were usually as to cultivation, non-alienation, etc. Direct proof of the performance of such conditions in the early part of the 18th century is now impossible; but proof of private ownership and possession continued down to the present time raises a conclusive presumption that all necessary conditions were actually complied with.

It is also suggested that the Joaquin Sedillo grant may have been made "by an alcalde or by some other of the subordinate officials, who so frequently and without authority assumed the power to alienate the public domain in New Mexico under the Spanish government." Appellee is compelled to challenge the correctness of this assertion. So far as our researches extend, no instance of such unwarranted exercise of authority by subordinate officials can be found, until many years after the expiration of the last century. While it is usually dangerous to be positive as to what did, or did not, take place under the former governments, yet it seems safe to assert that the Spanish archives will not show a single case of an original grant attempted by any one except governors at any time before the Mexican independence.

It is seriously urged against this claimant that down to a short time before he filed these cases in the court of private land claims he was mistaken as to the true origin of his title to the land which he knew had been in the possession of his family from the year 1818, and prior to that time had certainly been in the possession of Gutierrez and his heirs for many years back into the last century. In a number of the original colonies along our Atlantic seaboard may

be found conditions not dissimilar to those prevailing in those portions of New Mexico which were settled shortly after the reconquest of the country in 1692. If that portion of our country were ceded by our government to some other sovereignty, with careful treaty stipulations as to the preservation of property rights, and the unfortunate inhabitants were called upon by the new sovereign to make proof of their titles to lands and required to show that they held under titles "lawfully and regularly derived" from the government of England or the United States, how many of the present owners of lands in Virginia, New Hampshire or Vermont cou'd make such proof as is now insisted upon by the representatives of the United States? What would be the condition of a large portion of the inhabitants of the 138 towns in Vermont which had been chartered by New Hampshire prior to the determination of the controversy between New Hampshire and New York in favor of the latter? Take as a special instance of the confusion and uncertainty which would arise, the case of land titles in those portions of New Hampshire bordering upon the Piscataqua and Exeter Rivers. In November, 1620, James I chartered the Plymouth Company for the governing of New England, which was the territory between the 34th and 48th parallels of north latitude. In 1622 this company gave a special charter to Gorges and Mason of the land between the Merrimac and Kennebec Rivers, extending sixty miles inland. It is stated by some authorities that the settlements at Portsmouth and Dover were made in 1623, under this charter by companies sent out by Gorges and Mason. It is also stated, as a recently discovered fact, that David Thompson had a grant of land and founded these settlements, and that Mason had nothing to do with them. There was litigation for more than

a century and a half by Mason and his successors in title in their efforts to establish their proprietary right. Reverend Doctor Quint, of Dover, declares that all of the land titles in Dover and several neighboring towns proceed from a grant to Edward Hilton and associates in 1630. He also says, however, that great conflicts were usual in the early grants. References are made to these conditions in the following authorities:

23 *Encycl. Britann.*, 77.

17 *Encycl. Britann.*, 403.

4 *Encycl. Americana*, 23.

History of Rockingham and Strafford Counties.
758 *et seq.*

Without going into any comparison of the merits of these different charters and grants, which would be entirely unimportant, what would be said of the attempt to confiscate the land on Dover Point because its present holders earnestly claimed title from John Mason when it really came from Edward Hilton? Or because they set up a claim under Hilton when the true source of their title was the grant to David Thompson? And yet that is substantially what is here asked by the representatives of the government as to the lands now under consideration.

Counsel for the government innocently suggest that the owners of the property in 1736 may have lost their title to their property, because the country was overrun by Indians and they were compelled to abandon it. Unfortunately for this suggestion there is nothing in the history of New Mexico to support it. It may be asserted with confidence that at no time after 1736 did the Indians or anything else cause the abandonment of any lands or settlements

anywhere in the valley of the Rio Grande between Bernalillo on the north and Socorro on the south. This was the richest, most easily cultivated and most thickly settled portion of New Mexico, and there is no instance on record of any men or set of men having abandoned a foot of land in that valley after the early years of the 18th century.

The further suggestion that Congress has fully provided for a case like the present one by permitting people to retain their homes and ancestral possessions upon proving possession for no less than twenty years, has no application, because that provision is limited to the amount of 160 acres, while the Bosque de los Pinos, for which Colonel Chavez is contending, contains probably 2,000 acres.

While it it is perhaps immaterial and unimportant, yet the contention of the government that the two tracts of land were not all united in the possession of Diego Borrego in 1734, may not be unworthy of attention. This contention is founded upon the fact that in the conveyance of Diego Padilla to Borrego, the boundary on the south is said to be land of Diego Padilla, and counsel for the government jump at the conclusion that this land was a part of that which Padilla had received from Antonio Gutierrez. This is pure assumption. A careful examination of the conveyance, in both languages, ~~as it appears~~ on page 15 of the record in number 207—it is incorrectly printed in number 208—will show that it purports to convey to Borrego the piece of land which Padilla had received from Captain Antonio Gutierrez, the southern boundary being a line midway between two houses which Padilla had built near the boundary line of

the land received from Gutierrez. It is to be noted that this Diego Padilla was a grant owner in the same vicinity, having land east and south of the Bosque de los Pinos, but on the other side of the old river, and he may well have owned other land on the west side of the river.

II.

The title to the land was complete and perfect in 1848.

All that is required by section 8 of the act of congress is that the title should be "complete and perfect at the date when the United States acquired sovereignty." Counsel for the government devote a great deal of space to arguing that the evidence adduced does not show that the grants as originally made were "complete and perfect" and that there is no direct evidence of such subsequent approval by the king or by the governor as to make them "complete and perfect." The true question to be discussed is not as to what the title was at its inception, or at any time during the 18th century, but what was its condition in February, 1848? An examination of the opinion of the court below will show that the confirmation was put largely upon the fact that forty years' possession, proceeding upon a title by inheritance, was sufficient evidence of a perfect title to the whole tract, and sufficient to show a connection of such possession with the original grant. In this opinion the court adhered to the views previously expressed in the case of the Alameda grant. In that case the opinion of the court, written by Associate Justice Sluss, so fully and ably sets forth the law on this point, that I cannot do better than to print it as a supplement to this brief, and to ask that the court read it in connection with this point.

It will be seen, even if we disregard, in this connection, the evidence as to the ownership and pos-

session in 1734 and 1736, and the presumption that such ownership and possession continued, there being no evidence to the contrary, yet there has undoubtedly been continuous possession by inheritance and subsequent purchase, which were considered "just title," in the language of the Spanish law, for more than sixty years before the United States acquired sovereignty over New Mexico, whether we fix the date of such acquisition in 1846, when General Kearney entered Santa Fe, or in 1848 when the treaty was made.

While the facts in the Alameda case are not exactly parallel to those in the present case, yet there is a close similarity, and the reasoning of the court in that case is strongly and directly applicable to the claim of appellee.

This court has already in substance recognized the propriety and conclusiveness of the position of the court of private land claims.

* *U. S. vs. Rocha*, 9 *Wall.*, 646.

U. S. vs. Pillerin, 13 *How.*, 10.

U. S. vs. De Haro, 22 *How.*, 297-8.

Whitney vs. U. S., 167 *U. S.*, 546.

U. S. vs. Chavez, 159 *U. S.*, 463-4.

In the case last cited, at page 464, the court clearly and distinctly declares the propriety of presuming a grant or title by record under such conditions as those which are shown to exist in this case, and says that the principle upon which this doctrine rests is one of general jurisprudence and was a feature of the Mexican law at the time of the cession.

III.

The form of the decree was proper, but is immaterial.

The last point sought to be made on the part of the government is that the confirmation should not have been to this appellee nor to the Pueblo of Isleta, although possession of the property is clearly shown for more than a hundred years. The argument is based in part upon the assumption that there is still outstanding a portion of the title of Clemente Gutierrez and that this confirmation would prejudice some possible heirs who may have some right. It is respectfully submitted that under the provisions of the act creating the court of private land claims, which are quoted at pages 52 and 53 of appellant's brief, the confirmation can have no injurious effect upon the rights of any imaginable tenants in common under inheritance from Clemente Gutierrez, and would not in any of the ordinary courts be permitted to have such effect. It can be of no consequence whatever whether the confirmation is made to this appellant and the Pueblo of Isleta, or to the heirs and legal representatives of Antonio Gutierrez, or of Joaquin Sedillo, or of Diego Borrego, or of Nicolas de Chavez or of Clemente Gutierrez. The decree can be conclusive only as between the United States and persons claiming any interest in the land.

It is suggested that there is no proof that the Pueblo of Isleta is the owner of the land as far as the Ceja of the Rio Puerco which is some miles west of the Rio Grande. The proof is clear that the Pueblo has had possession of the lands on the west side of the river between the boundary of the pueblo and the lands of Los Lentes, and this clearly includes, if not more, at least all the lands in the valley on the west side of the river, and as to the lands further to the west they are practically of no value whatever,

except to a very slight extent for purposes of pasturage. However, this appellee has no concern as to the lands of the pueblo and is not charged with any duty towards them; but it is proper to suggest that, however it may appear upon the face of the record, the admission made by the government as to the possession of the pueblo, was at the time intended, and was understood by the court to mean, that all of the land in these grants on the west side of the river was possessed and claimed by the Indians.

In conclusion it may truthfully be said that the confirmation of these claims does not call for any such "too free use of presumptions" as is deprecated by council for the government at the close of their brief. One presumption only is asked, and is essential to the case, and that is the presumption set out as proper by this court in the closing sentences in the case of *U. S. vs. Chaves*, 159 U. S. And the facts and circumstances as to the long-continued ownership and possession of the land claimed, are such that every consideration of national good faith, justice and equity call for the confirmation, and for the indulgence of every possible proper presumption necessary to reach that end.

F. W. CLANCY,

Counsel for Appellee.

**PAPERS SHOWING JUDICIAL PROCEEDINGS AS
TO BOUNDARIES OF BOSQUE DE LOS PINOS.**

The citizen, Antonio Ximenes, constitutional justice (alcalde) of the jurisdiction of Tome, and of the districts thereunto annexed.

I certify in the most sufficient manner, that whereas, the Francisco Xavier Chavez, resident of this jurisdiction of Isleta, presented himself before this court, verbally, against the residents of Valencia in this jurisdiction, on account of damages he was sustaining in the destruction of a grove, called Los Pinos, and which is now his property, I proceeded to the aforesaid ground for the purpose of ascertaining the boundary, of what belongs to each one, and having caused the defendants to appear, they empowered the citizen, Felipe Vigil, of the same vicinity, with all the authority and right they had in the property in question, and the parties, plaintiff and defendant being present, and having argued all the right and reasons which they had in their favor, the said Vigil went and conducted me to the edge of a border called the old river (rio viejo), and distant from it towards the south, about ten yards., and near some little houses which are being built in the place called Las Peraltas, as towards the east, where he showed me some large stones, which appeared to have been fastened in with sufficient purpose and formed a land mark, which sign he said was the boundary that made the division towards the north and separated the lands of his clients, with which the said Chavez expressed himself satisfied, and having directed them to keep within their boundaries to avoid another claim and not to injure their neighbor in anything, within what was there acknowledged as his property, to which they agreed, I executed the present document at the request of the interested party, on this common paper, there being none of the qualified, in

this jurisdiction, being obliged to attach the proper, I signed it with my attending witnesses acting by appointment in the absence of an notary, to which I certify in this place of Tome on the fifteenth day of the month of February, one thousand eight hundred and twenty four. I certify:

(Signed) ANTONIO XIMENES,
(Rubric.)

Attending: (Signed)
FRANCISCO IGNACIO DE MADONIA,
(Rubric.)

Attending: (Signed)
JOSE SALAZAR.

SURVEYOR GENERAL'S OFFICE,
Translators Department,
Santa Fe, N. M., June 7, 1855.

I certify the foregoing to be a translation of document marked F in claim No. 3, to the Bosque de los Pinos.

DAVID V. WHITING,
Translator.

Sir Political Chief (Gefe Politico.)

Mariano Chavez y Castillo, resident of Los Padijas in the jurisdiction of Isleta, respectfully represents to you: That to the estate of Madam my mother, which I manage, belongs a grove, known by the name of Grove of the Pinos (Bosque de los Pinos), and which previously belonged to Don Clemente Gutierrez, deceased, from whose heirs my deceased father purchased from time to time, until he became possessor of the whole, as appears from the deeds of sale which they granted from time to time, and which are in my hands; but being impossible to procure the old deed which gave the possession to the said Gutierrez, deceased, a question of doubt has been raised by the residents of the jurisdiction of Valencia, as to the

limits or boundaries of said grove, notwithstanding its long and pacific possession by its legitimate possessors, and I have sustained injuries of various descriptions from the said residents, whom I have sued before the justice (alcalde), of Valencia, who, united with the corporation and residents, say they have an interest in my property, for which cause, and neither the justice (alcalde) or any other individual of the corporation being competent to take cognizance of the matter the formalities of the law preventing the justice (alcalde) and corporation of Valencia, from sitting in judgment on the case, I pray your honor to be pleased to direct the nearest justice (alcalde) or whoever you may deem proper, to hear my suit and execute to the party that may have justice, a document that will secure the property, and avoid suits and inconveniences in the future, which are always injurious to the contending parties.

I pray you to receive this on the paper on which it is written, there being none of the proper seal in this territory.

San Andres de los Padillas, October 14th, 1835.

(Signed)

MARIANO CHAVEZ,

(Rubric.)

Santa Fe, October 16th, 1835.

If as the petitioner states, the constitutional justice of Valencia is legally disqualified from taking cognizance of the matter set forth in the petition, and it, as he also alleges, the magistrate of the corporation, and the whole vicinity are also disqualified, so that he cannot recur to the justice of the previous year, the constitutional justice of Tome, who is the nearest, will take cognizance of the matter in question, according to the practice adopted in the doctrine of the law, by Sala, and as the sovereign decree of the 18th of May, 1821, in its 11th article provides, in cases of this description, restricting himself to

what is indubitably observed in the regular order concerning these matters, endeavoring to avoid anything that may cause invalidity or obstruction in the proper administration of justice.

(Signed)

PEREA,

(Rubric)

SURVEYOR GENERAL'S OFFICE,
Translators Department,
Santa Fe, N. M., June 7th, 1855.

I certify the foregoing to be a translation of document marked G in claim No. 3, to the Bosque de los Pinos.

DAVID V. WHITING,
Translator.

The citizen, Miguel Olona, constitutional justice (alcalde) and judge of the primary court of the district of Tome, etc.

I certify, according to law, that in a book existing in this archive under my charge, and in which are recorded the acts of compromise, is found one of the following tenor:

"In the town of Tome, on the twenty-seventh day of the month of October, one thousand eight hundred and thirty-five, by virtue of having presented himself before me, Don Miguel de Olona, constitutional justice (alcalde) of the jurisdiction of Tome, Don Santiago Abreu, resident of the city of Santa Fe, showing me a decree of the Honorable Political Chief (Gefe Politico) issued on the 16th instant, in which I am notified to take cognizance, according to law, of a suit instituted by Don Mariano Chavez y Castillo, for damages caused by the residents of the jurisdiction of Valencia to his property, known as the Grove of the Pinos, said Mr. Chavez y Castillo having objected to the constitutional justice (alcalde) of the corporation and all the residents of Valencia, sitting in judgment in said case, being parties interested, and

Mr. Abreu having shown me a full power of attorney given to him by Mr. Chavez, to prosecute the matter to its final termination, I notified the justice (alcalde) of Valencia, forwarding him a copy of the aforementioned decree of the Honorable Political Chief (Gefe Politico) and asking him to appoint counsel for said residents to appear before my court on the following day, which accordingly took place, Don Juan Sanchez appearing as the counsel for the residents of Valencia. Whereupon I directed that both counsel should appear with their good men, for the purpose of settling the compromise, which was accordingly done, Abreu bringing Don Pablo Salazar as his good man, and Sanchez bringing the curate Don Francisco Ignatio de Mondariaga; and the case of compromise being opened, each counsel presented his power of attorney, and the following day was fixed for the purpose of examining the boundaries of the property in question, after this act I demanded from the counsel the documents in their favor, and Abreu answered, that as his principal had purchased the Grove of the Pinos from the heirs of the Pajarito estate, these only executed conveyances in which they state that they convey the portion they hold in the Grove, without setting forth boundaries, and that it has been impossible to find the deed giving possession to the Pajarito estate, notwithstanding all the efforts which have been made to procure it, the documents of the opposite parties, the place where the land marks were, the ancient possession, the knowledge of the ground and other facts of the same tenor, will show the justice which is demanded. Sanchez presented two documents, one made in the year one thousand seven hundred and fifty by certain Padiellas to the natives of the Pueblo of Isleta, conveying to them a piece of land, the northern and southern boundaries of which are only set forth, without men-

tion being made of the eastern and western, and other made in the year one thousand seven hundred and ninety-five by the said natives of Pueblo of Isleta to the residents of Valencia, in which it appears that the former sell to the latter two thousand four hundred and twenty five and one-half varas of land, measured from south to north, of the same land sold to them by the Padillas, according to the aforementioned deed, giving them for their northern and southern boundaries the land marks that still exist, on the east the mountain, and on the west the river, these steps being taken and having heard the arguments of the parties, and considered well the matter, I asked the opinion apart of the good men, who both stated that as the northern land mark indicated, and as stated in the deed, made in the year one thousand seven hundred and fifty, it was clear that the Grove of the Pinos, from the ancient border, adjoining Las Peraltas, of the old river (rio viejo) upwards, was considered by the natives of Isleta as property of others, as no mention was made of said Grove nor did they ever consider it as their own, and that according to the deed of one thousand seven hundred and ninety-seven, the aforesaid natives sold, towards the east, more than what belonged to them, or as according to the same deed they give the river as the boundary, without its having been given to them by the old deed, and without mentioning the Grove of the Pinos, which they have always considered as the property of others, they trespassed in selling a portion of it according to the number of varas they sold; that considering all of these reasons they are of opinion that the present judge, deliver to the counsel Don Santiago Abreu, as property of Don Mariano Chavez, from the border of the old river (rio viejo) adjoining Las Peraltas, upwards, and that the counsel, Don Juan Sanchez, retain the right of claiming

from the natives of the Pueblo of Isleta the land which is known to be curtailed from that which they purchased without any title, and I, the aforesaid judge, adhering to the opinion of the good men, sentenced that from the border, adjoining Las Peraltas, of the old river (rio viejo) upwards, be delivered by me to Don Santiago Abreu, as the property of Don Mariano Chavez y Castillo, Don Juan Sanchez retaining the right of claiming from the natives of the Pueblo of Isleta the land wanting according to this deed; and the foregoing proceedings being read to the counsel, Abreu said that he was satisfied with the sentence, and Sanchez that he was not satisfied, that he would, however, make use of the right he had to claim from the natives of Isleta, the land of which he is curtailed, and both signed with me the aforesaid judge and those in my attendance with whom I act by appointment in the absence of a notary, to which I certify. Miguel de Olona; associate, Pablo Salazar; associate, Francisco Ignacio de Mondariaga; Santiago Abreu, counsel; Juan Sanchez y Castillo, counsel; attending, Jose Maria Labadi; attending, Gregorio Baca.

Which copy is truly and legally made from the original, to which I refer, and for the proper use, I have executed it at the request of Don Santiago Abreu, in the presence of two witnesses this 28th day of October, 1835.

(Signed)

MIGUEL DE OLONA,

(Rubric.)

Attending: (Signed)

GREGORIO BACA,

(Rubric.)

Attending: (Signed)

JOSE MARIA LABADI,

(Rubric.)

SURVEYOR GENERAL'S OFFICE,
Translators Department,
Santa Fe, N. M., July 14th, 1855. }

I certify the foregoing to be a translation of document H, in claim No. 3, to the Bosque de los Pinos.

DAVID V. WHITING,
Translator.

IN THE COURT OF PRIVATE LAND CLAIMS:

ALEJANDRO SANDOVAL, *et al.*,

vs.

UNITED STATES.

}

Mr. Justice Sluss delivered the unanimous opinion of the court:

There is but one question involved in this case, upon which we wish to express an opinion at this time, and that is, whether at the time of the acquisition of this territory by the United States the grant under which the plaintiffs claim title was a complete and perfect title within the meaning of the act of congress creating this court, so as to authorize a confirmation for more than eleven square leagues of land.

Under the law of Spain it appears to have been required that all grants of land issued by the governors of territories should be approved and confirmed by some designated official or authority before becoming finally valid, so as to pass the legal title from the crown.

The question is raised in this case, whether such confirmation was had of this grant, so as to make it a complete and perfect title.

In order to determine this question it is necessary to examine the laws and regulations of Spain upon the subject. This grant was issued in 1710; the grant was made by the governor, the grantee, Vigil, placed in possession and thereafter he conveyed the land described in the grant to Gonzales, under whom the present occupants and claimants derive title.

On October 15, 1754, a royal regulation was issued by the crown, for the purpose of having the outstanding titles to lands investigated. Officers and tribun-

als were therein designated for the purpose of having these titles which had been legally issued confirmed, and as to those which had not been legally issued, of having the lands restored to the crown.

A very full system of investigation was provided for by the regulation. By the second section it was provided that the judges and officers to whom jurisdiction for the sale and composition of the royal lands may be sub-delegated, should "proceed with mildness, gentleness and moderation, with verbal and not judicial proceedings, in case of those lands which the Indians shall have possessed, but in regard to those granted to towns no charges shall be made, the towns shall be maintained in possession of them and those that may have been seized shall be restored to them, and their extent enlarged, nor shall severe strictness be used toward those already in possession of Spaniards, or persons of other nations, and in regard to all, the requirements of laws 14, 15, 17, 18 and 19, title 12, book 4 of the *recopilacion de Indias*, shall be observed."

In our opinion this is an express declaration making the provisions of law 14 a part of this royal regulation, to the same extent as if it had been incorporated in it. This law 14 is found on page 52 of 2 White. It appears to be a portion of a prior regulation issued for the same purpose and under the same circumstances as that of October 15, 1754, and makes provisions for the investigation of outstanding titles to lands similar to those provided in that of 1754. It provided for the investigation of these titles by audiencias and other authorities, and also provided the manner of such investigation, and among others contained this provision: "For all this we order and command the viceroys, presidents and pretorial audiencias, whenever they shall think fit, to appoint a sufficient time for the owners of lands to exhibit be-

fore them and the ministers of their audience, whom they shall appoint for that purpose, the titles to lands, estates, huts, and caballerias, who, after confirming the possession of such as hold the same by virtue of a good and legal title, or by a just prescription, shall restore to us the remainder, to be disposed of according to our pleasure."

In our view this regulation of 1754, in connection with law 14 referred to, is an express recognition of the rule, that title to lands in the Indias could be obtained, good as against the crown, by what was termed a just prescription.

Further referring to the regulation of 1754, section 3 required that notice should be given to all persons holding lands under titles originating subsequent to the year 1700 and up to the time of the issuing of the regulation, requiring them to exhibit their titles and show by what right they held their lands, and provided that this notice should warn them that they would be deprived of their lands, if, without just cause, they failed to exhibit their warrants within the time limited. Section 4 provided, that those who held lands by titles issued prior to 1700, should be in no way molested, and that their titles should be confirmed without investigation. Section 5 provided that these persons holding lands by titles issued subsequent to 1700, which had not been confirmed by the tribunals or officers designated for that purpose, should exhibit them, and that the tribunals mentioned should investigate them and the bona fides of their issuance, and the quantity and value of the land, and determine whether or not the titles so issued should be confirmed. Sections 7 and 8 provided that the notice mentioned should also have incorporated the fact that rewards would be given to those who should inform of lands occupied without legal title, and that a portion of lands so occupied, would

be adjudged to those who should inform against them, and that the lands so held would be restored to the crown for the purpose of being re-granted.

We think that, from a review of these provisions of the regulation of 1754, taken as a whole, it was recognized by the crown at that time that the legal title to land could be taken from the crown by what was called a just prescription. This renders it necessary to inquire what was meant by a just prescription.

The rules upon this subject are fully laid down in the civil law of Spain, which we find in 1st *White*, beginning at page 91; it says "Prescription is to hold the property or thing of another for a certain length of time and to make it thereby one's own, so that the rightful owner afterwards can not deprive you of it. * * * To constitute prescription, good faith, just title and capacity of the thing for the purpose and the persons who prescribe, are necessary, as also continued and uninterrupted possession for a determinate time. * * * Good faith consists in the possessor believing that the person from whom he received the thing had the right to alien or transfer it. * * * Just title consists in the cause or consideration by which possession of the thing is obtained being one of those by reason of which dominion is acquired, as purchase, gift, inheritance, etc."

We find also further provisions as to the time in which things were prescribed as against the crown. "The time in which things are prescribed is comprehended under two kinds of prescription, immemorial and temporal. The last is proved by witnesses of good fame and character, who depose to having seen the person in possession of the thing or property for forty years, and the first having heard their ancestors say that they never saw nor heard anything to the contrary." By royal decree dated July 16, 1819, 2nd *White* 562, we find title by prescrip-

tion to be described as possession of forty years. This decree was issued with reference to the existing condition of things concerning the crown lands in the Island of Cuba, and contains the following: "In the absence of other title a just prescription, that is, a possession of forty years, duly approved according to law, shall be admitted and respected."

We further find in law 4, title 8, book 11, *Recopilacion de Indias*, a provision that: "Possession immemorial when it is proved, how and when, and with the circumstances required by the law of Toledo, a possession of forty years is sufficient to prescribe against us and our successors as regards cities, towns and places, etc."

From this investigation, we can not escape the conclusion that a continued, uninterrupted possession of land for a period of forty years, the possession of which has been obtained under an apparent title, that is, such a title as would give to the occupant the right of possession and which possession had been taken in good faith and in belief on the part of the occupant, that he was entitled to have his title confirmed to him, would be sufficient to transfer the entire title from the crown of Spain to the person who held such possession.

This brings us to the application of these principles to the facts of this case. The evidence is sufficient to show that possession of the tract in controversy was taken by Vigil in 1710, under a grant regularly issued by the governor, and which was amply sufficient to confer the right of possession of the property upon Vigil and his successors; that possession was taken in good faith; that it was held continuously from 1710 up to the time of the issuing this decree in 1754. This of itself would create a title by prescription as against the crown of Spain, and entitle the holders of the possession under the

original grant to a confirmation of their title by the officials designated in the decree of 1754 as a matter of legal right, even if by the terms of that decree, they were required to present evidence of such prescriptive right in order to obtain such confirmation.

We think, therefore, it necessarily follows that they had a perfect title at the date of the decree of 1754.

But suppose we should conclude that it was necessary under the decree of 1754 for the holders of this tract to go before the governor and make proof of their original grant, and of their continued possession, in order to obtain a confirmation as provided for in the decree, and that such confirmation was prerequisite to their obtaining a full legal title, whether the evidence before us is sufficient to justify the finding that such was done.

Immediately following the issuance of this decree of 1754, another period of forty years continuous possession of this tract is shown to have been held under the title issued to Vigil, that this possession was characterized by the same good faith that characterized the original taking possession, so that even after the decree of 1754, under the provisions of Spanish law another title by prescription was created in the occupants of this tract.

Therefore, if we are to hold that it was necessary under the decree of 1754, for the holders of the title to present it for approval and obtain a confirmation, considering the subsequent continuous possession from that time until Spain relinquished dominion over the territory, and considering the general condition of things in the country at that time, and considering these provisions of sections 7 and 8 of the regulations of 1754, offering rewards and portions of the lands to those who should inform against the land as being held without confirmation of title; these

matters, as circumstantial evidence, render the conclusion irresistible that such approval must have been given and such confirmation made.

We think a title by prescription proceeds upon a presumption and operates as a conclusive presumption of the existence of every fact necessary to transfer the legal title and right of possession from the original rightful owner to the party holding under such prescription.

That being the case, there remains nothing to be done concerning this grant to render the title of the complainants complete. The legal title had passed from the crown to the parties holding possession long prior to the cession of this territory to the United States. That being the case, it necessarily follows that the claimants held a perfect title within the meaning of our act of congress, at the time of the acquisition of this territory by the United States government. Judgment, therefore, will be for the plaintiffs, and a confirmation for the full amount of land claimed.

UNITED STATES *v.* CHAVEZ.

SAME *v.* SAME.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

Nos. 38, 39. Argued October 16, 17, 1899. — Decided December 18, 1899.

Upon a long and uninterrupted possession of lands in Mexico, beginning long prior to the transfer of the territory in which they are situated to the United States, and continuing after that transfer, the law bases presumptions as sufficient for legal judgment, in favor of the possessor, in the absence of rebutting circumstances, which do not exist in this case.

To the land involved in these cases the appellees claimed a complete and perfect title, and petitioned the Court of Private Land Claims under section 8 of the act establishing

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the court to so adjudge and confirm it. After due hearing the court did so adjudge, and entered a decree confirming the title to petitioners, from which decree the United States prosecuted this appeal.

The basis of the title to the southern portion of the tract (No. 38) is a grant made on the 5th day of November, 1716, to captain Antonio Gutierrez by captain Felix Martinez, the then governor and captain general of New Mexico. The appellees claim to derive from Gutierrez by conveyances and legal succession, and also claim a continuous possession in him, their predecessors in interest, and themselves from the date of the grant to the present time.

The course and the conveyance of the title is exhibited by an abstract filed by the claimants in the lower court. It is as follows:

“ Abstract of title.

“ The claimant is unable to present any direct conveyance from the original grantee or from his heirs with which he is in any way connected. He relies upon the papers contained in archive No. 178 in the office of the surveyor general for New Mexico, to show that the original grantee, Antonio Gutierrez, took possession of the said tract of land and afterwards transferred the same to Diego Padilla, and that said Diego Padilla conveyed said land to Diego Borrego, who in turn conveyed the same to Nicolas de Chavez, these conveyances being made in the years 1734 and 1736. Claimant files herewith copies and translations in triplicate of said archive No. 178.

“ Claimant avers that it appears from archive No. 371, in the office of the surveyor general for New Mexico, that at some time prior to the year 1785 the tract claimed had become the property of Clemente Gutierrez, the said archive No. 371 is a record of proceedings as to the estate of the said Clemente Gutierrez, and claimant files herewith copies and translations in triplicate of so much thereof as shows the inventory of all the real estate belonging to said Clemente Gutierrez and the hijuela given to each of the heirs showing their respective shares of said real estate.

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"Claimant relies upon the following described deeds to connect him with the title of said Clemente Gutierrez and through him with the original title to the grant:

"Deed of Jose Lorenzo de la Pena, for himself and his sister Mariana and his brother Jose Rafael de la Pena, to Francisco Xavier Chavez, dated September 20, 1818, for an undivided fifth of the Bosque de los Pinos, bounded on the north by the lands the pueblo of Isleta, on the south by the lands known as those of Los Lentes, on the east by the hills, and on the west by the Rio del Norte, a translation of which deed, made in the year 1855 by the official translator of the office of the surveyor general for New Mexico, is now on file in this court in case No. 64, and triplicate copies thereof are filed herewith.

"Deed from Francisco Sarracino, representing his mother, Maria Luisa Gutierrez, one of the children of Clemente Gutierrez, to Francisco Xavier Chavez, for an undivided interest in the ranch of Bosque de los Pinos, bounded on the north by the league of the pueblo of Isleta, on the south by residents of Valencia, on the east the plain, on the west the Rio del Norte, dated October 19, 1821, a translation of which deed, made in the year 1855 by the official translator of the office of the surveyor general for New Mexico, is now on file in this court in case No. 64, and triplicate copies thereof are filed herewith.

"A deed from Juan Nepomuceno Gutierrez and Apolonia Gutierrez to validate the sale made by their father, Lorenzo Gutierrez, of the portion to which he and Lorenzo Gutierrez were entitled in the Bosque de los Pinos, dated December 27, 1839, a translation of which deed, made by the official translator of the office of the surveyor general of New Mexico in the year 1855, is now on file in this court in case No. 64, and triplicate copies thereof are filed herewith.

"Claimant avers that the originals of the three deeds above described were filed in the office of the surveyor general in 1855, and that they appear to have been withdrawn from that office by J. Bonifacio Chavez on the day of , 187 , and cannot now be found, although the official translations made at that time have been preserved.

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"The said Francisco Xavier Chavez, to whom the said deeds were made, was the grandfather of this claimant, and claimant has inherited from his said grandfather an interest in the property conveyed by said deeds."

A fuller statement of the documentary evidence may be omitted except of the original grant. It was produced from the Spanish archives, and its translation is as follows:

"Plaintiff's Exhibit A. Archive 315.

[Translation.]

1716

(1.)

No. 449.

To the Governor and Captain General:

"I, Captain Antonio Gutierrez, a resident of the town of Albuquerque and a native of this Kingdom, appear before you in due legal form, and I state that, being very much in need of lands on which to plant in order to support my family, and also to the end that my sheep may have room to scatter out, and there being an uncultivated and unoccupied tract of lands below Isleta, apparently at a distance of two leagues, which formerly was held by Cristobal de Tapia, of which tract will you be pleased to make me a grant in the name of His Majesty in the same manner as it was held by said Cristobal de Tapia, and, if you be pleased to grant it to me, will you also order that the real possession be given me, designating to me boundaries and landmarks, in order that no prejudice may result to me in its possession?

"Wherefore I ask and pray, with due humility, that you will be pleased to make me the grant that I ask for in the name of His Majesty, as one who represents his royal person, and I swear in the name of God our Lord, and by the sign of the Holy Cross, that this my petition is not in bad faith, and whatsoever is necessary, etc.

ANTONIO GUTIERREZ. [SCROLL.]

"NOTE.—I ask and pray that the boundaries belonging to said tract be designated to me—on the north an arroyo with some cottonwood trees that comes down from the hills, on the south the pueblo of San Clemente, on the east the Del Norte

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River, and on the west the hills of the Puerco River; and I swear in due legal form that my petition is not in bad faith, and whatever is necessary.

ANTONIO GUTIERREZ. [SCROLL.]

Presentation.

"At the town of Santa Fé on the fifth day of the month of November, in the year one thousand seven hundred and sixteen, before me, Captain Felix Martinez, Governor and Captain General of this Kingdom and provinces of New Mexico and castellan of its forces and garrisons for His Majesty, it was presented by the party therein named.

Decree and Grant.

"And it having been examined by me, I treated as properly presented in accordance with law, and, in view of the fact that it is His Majesty's will that his lands should be settled and fortified, in his royal name I make to the petitioner the grant that he asks for, as he describes it, and as Cristobal de Tapia formerly enjoyed it, without prejudice to a third party who may have a better right, and I command Captain Baltazar Romero that as soon as he be notified with this my decree he shall place the petitioner in real possession; and this shall serve him as a sufficient formal title for his protection, and when these proceedings shall have been had he will transmit this grant and possession to my civil and military secretary in order to make him a certified copy thereof, and that this original petition remain in the said archives; and in witness thereof I sign it with my civil and military secretary.

FELIX MARTINEZ. [SCROLL.]

Before me,

MIGUEL TENORIO DE ALBA, [SCROLL.]

Civil and Military Secretary."

Archive No. 178 consisted of three instruments. Two of them were respectively entitled an "instrument of donation," and of "real sale," and were respectively executed on the 7th and 11th of January, 1734, one Don Diego Borrego being grantee in both. The third was a conveyance from Borrego

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to Don Nicolas Chavez. It is only necessary to quote portions of the first two instruments. From the first as follows:

"In this villa of San Felipe de Albuquerque, on the seventh day of January of the year one thousand seven hundred and thirty-four, before me, Captain Juan Gonzalez Bas, alcalde, mayor and war captain of the said town and its jurisdiction, personally appeared Diego Padilla, whom I certify I know, who, in the presence of two witnesses, said that he gave and did give freely to Don Diego Borrego, to wit, a piece of land which, as will hereinafter more fully appear, he had and possesses by donation, which, in favor of the said Padilla, was made by Captain Antonio Gutierrez, and its boundaries are: On the north, lands of Joaquin Sedillo; on the east, the Rio Grande; on the south, land of the said Diego Padilla, there serving as a landmark on the said boundary, the midway line between the two houses which the said Padilla built near the boundary line of the said donation, and on the west with the boundary line called for in the title papers of the whole tract which the said Padilla has; and as I say of the said lands, he makes gift and donation and conveys his own right, domicil and seign'ory, the said Diego Padilla, with the consent of his wife and children, to the said Don Diego Borrego, without any consideration other than his own will. . . ."

From the second the following recital, "personally appeared before me [the same officer as in the other instrument] Antonio Sedillo, the legitimate son of Joaquin Sedillo, and forced heir of the aforesaid." And further, that "he gave and did give in real sale a tract of land down the river and below the pueblo of Isleta. . . . And as I say, the said Antonio Sedillo gives and did give in real sale the said tract, after consultation and with the consent of his mother and brothers and sisters, who gave him authority for the same, because the said Joaquin died in debt, and in order to procure the amount which he owed; and the said Antonio Sedillo acknowledges that the said tract was acquired by his said father in part by grant in the name of His Majesty and in part acquired and held under real sale, as shown by five instruments which he delivered; and the boundaries of the said tract are: On the north, the

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line of the league of the Isleta pueblo; on the east the Rio Grande; on the south the twin alamo, called by some the Culebra, and on the west the ridge of the Puerco River; and he says that the said tract he gives to Don Diego Borrego for the price and sum of two hundred dollars. . . .”

It will be observed that there are only direct conveyances from the original grantee, Antonio Gutierrez, to Don Diego Borrego, who received the title in 1734. Borrego conveyed to Chavez in 1736. From the latter no transfer is shown to any one, but that the title passed from him in some way to Clemente Gutierrez prior to 1785 is claimed to be established by what is called the “proceedings and inventory, division and partition, of the property which he left at his death among his wife and five children, concluded in the year 1785. (Archive No. 371.)”

The description in the inventory is as follows :

“Idem. A ranch below the boundary of the pueblo Isleta, commonly called San Clemente, Barrancas, and Los Pinos, of which they have possession, although there is no title deed of its boundaries, estimated at \$1200.”

The claimants trace title directly to the widow and children of Clemente Gutierrez.

The pueblo of Isleta presented a petition in the court below in which it adopted the allegations of the original petition and joined in the prayer for the confirmation of the validity of the title to the heirs and legal representatives of Antonio Gutierrez.

At the close of the testimony counsel for claimant stated, counsel for the government not objecting, that “it is admitted by the United States to be a fact that the pueblo of Isleta has had open and notorious possession and use of lands on the west side of the Rio Grande along between the boundary of the pueblo and the lands of the Los Lentes as far back as the memory of the oldest man living within the pueblo can extend, and that such possession and use have been claimed to be under a purchase from the heirs of Clemente Gutierrez, of which some documentary evidence has been presented in the paper executed by Lorenzo Gutierrez, dated May 3, 1808, and

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that said paper, which is marked 'Plaintiff's Exhibit G,' and also Plaintiff's Exhibits H and I, come from the custody and control of the officers of said pueblo, who have had them as far back as memory can extend."

Exhibit G, referred to, is as follows:

"[Translation.]

"Don Lorenzo Gutierrez, captain of militia, commandant in the field, alcade of second election of the town of Albuquerque, its jurisdiction and frontier, etc., etc.

"Whereas the principal men of the pueblo of San Agustin de la Isleta have come before me asking for a deed of conveyance for the lands which, from the boundary of the said pueblo to that of Los Lentes, from south to north, were sold to the said pueblo by my predecessor, Don Mariano de la Pena, from the estate of my mother, Donna Josefa Polonia Baca, of which I am the administrator, of which sale the documentary evidence is in the possession of the alcalde of first election of this said jurisdiction, Don Manuel de Artega, from whom, he being seriously ill, it cannot be obtained until he gets better or dies, and it being probable that it is deposited in the archives under his charge, in order to avoid the repeated petitions of the said men, and knowing that the purchase was really made, I give them the present, which I sign for their security, signing it in order that it may so duly appear, with two assisting witnesses, in this place of Parjarito, on the third day of the month of May of the year one thousand eight hundred and eight.

LORENZO GUTIERREZ. [RUBRIC.]

"Assisting witness: AUGUSTIN DE LA PEÑA. [RUBRIC.]

"Assisting witness: MANL. RUVI. [RUBRIC.]"

The appellees also presented to the Court of Private Land Claims a petition for the confirmation of grant alleged to have been made "by the proper authorities of the Government of Spain to one Joaquin Sedillo, which land lies immediately south of the lands of the Indian pueblo of Isleta, and was bounded on the north by the line of the league of said pueblo,

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on the east by the Rio Grande, on the south by a twin alamo, called by some the alamo de la Culebra, and on the west by the cefa of the Rio Puerco." This is the northern portion of the tract contained in the decree of confirmation.

It was further alleged "that the original grant papers evidencing the said grant have been lost or destroyed, and cannot now be produced. The fact of the existence of said grant is, however, shown by papers which constitute a portion of the archive 178 in the office of the surveyor general for New Mexico, copies and translations whereof are filed herewith in duplicate."

The matter of the petition constitutes case No. 39 on the docket of this court, which, though separately appealed has been submitted with case No. 38. The lands in each being contiguous—the north boundary in one being the south boundary of the other, and having common claimants and possession, and the title in each being supported in part by the same evidence—the Court of Private Land Claims consolidated them and included their confirmation in the same decree.

The petition alleged on information and belief, as to the southern boundary, as the petition in 38 alleged as to the northern boundary of the land therein described, that it "has been completely destroyed and its location cannot now be identified with certainty, and it is probable that no tradition of its location now exists, for the reason that the said tract of land and the one immediately south thereof had become united in ownership in the hands of one person as early as 1734, as will fully appear by reference to the said archive 178, hereinbefore mentioned."

The archives referred to and the documentary evidence are the same as in No. 38, except there is no grant.

The oral evidence of possession was given by the claimant, Francisco Chavez. He testified that he became personally acquainted with the tract of land commonly known as Bosque de los Pinos, in Valencia County, New Mexico, (the tract confirmed to him,) about 1839, and it was then in the possession of a relation of his grandmother. And from the records he

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knew his grandfather died in 1829, and from what he had been told by the family, his grandfather, before the latter's death, "possessed it, farmed it, and kept cattle and sheep upon it." He further testified that since he has known it his father had possession, then his mother, and after her death the heirs, and the possession had never "in any way been disturbed or encroached upon by other people." The boundaries of the Bosque de los Pinos he gave as follows: "On the north, by the Isleta Indian pueblo lands; on the east, by the old river bed; a stone marks the northeast boundary, and on the south by the town of Peralta; on the west, by the present river."

The river referred to is the Rio Grande del Norte, which at the time of the original grants was their eastern boundary, but which some time subsequently to their date changed its channel. The land between the old and new channels is denominated in the evidence and in the decree of the court as "Bosque de los Pinos," and was confirmed to Francisco Chavez. All the rest of the tract was confirmed to the pueblo of Isleta.

The sketch on page 519, which was introduced in connection with the testimony of Chavez, shows the relation of the grants, the location of some of the natural objects referred to, and the change in the river bed.

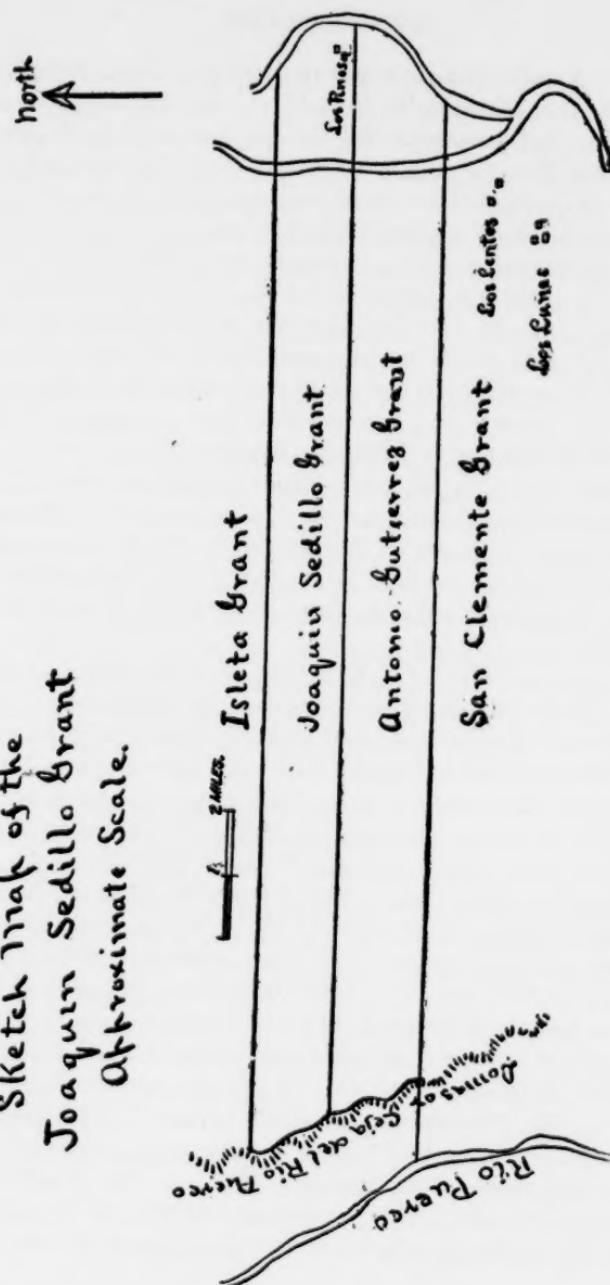
Mr. William H. Pope for appellants. *Mr. Solicitor General* and *Mr. Matthew G. Reynolds* were on his brief.

Mr. Frank W. Clancy for appellees.

MR. JUSTICE MCKENNA, after making the above statement, delivered the opinion of the court.

The title asserted by appellees is deficient in the support of direct evidence. Is the deficiency supplied by the probative force of the possession of the land? Private ownership of the property with possession is claimed for over one hundred and thirty years before the cession of the territory to the United

Sketch map of the
Joaquin Sedillo Grant
Approximate Scale.



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States. A continuous possession is shown from some time prior to 1785, inferentially from 1716. Mexico respected that ownership and possession for the full period of its dominion over New Mexico. Spain respected them for over one hundred years, and at the time of the cession of the sovereignty over the territory to the United States no one questioned them. Succeeding to the power and obligations of those Governments, must the United States do so? This is insisted by their counsel, and yet they have felt and expressed the equities which arise from the circumstances of the case. Whence arise those equities? That which establishes them may establish title. Upon a long and uninterrupted possession, the law bases presumptions as sufficient for legal judgment, in the absence of rebutting circumstances, as formal instruments, or records, or articulate testimony. Not that formal instruments or records are unnecessary, but it will be presumed that they once existed and have been lost. The inquiry then recurs, do such presumptions arise in this case and do they solve its questions?

Fletcher v. Fuller, 120 U. S. 534, was an action of ejectment. Both parties claimed the land in controversy under one Francis Richardson, who died in 1750; the plaintiffs under his daughter, Abigail Fuller; the defendants under his grandson. The question arose whether a deed could be presumed to have been executed by Abigail Fuller to the grandson or to his father, uniting all interests in him. It was presented in instructions. The defendants asked an instruction that the jury might presume the execution of such a deed to their ancestor in title. The court refused, and instructed the jury as follows: "Of course, gentlemen, if you find that you can presume a grant, if you find from the testimony that there was a lost deed which passed from Abigail Fuller to Jeremiah Richardson, or to Francis Richardson, and the property was inherited by Jeremiah, so that Jeremiah had a good title to convey to Stephen Jencks, that makes the title of the defendants here complete . . . But, gentlemen, you are to look into the evidence upon this question of a grant, and if the evidence in favor of the presumption is overcome

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by the evidence against such grant, then, of course, you will not presume one. It is a question of testimony."

The defendants requested the court to instruct the jury "that the presumption they were authorized to make of a lost deed was not necessarily restricted to what may fairly be supposed to have occurred, but rather to what may have occurred, and seems requisite to quiet title in the possessor." The instruction was refused, and on error to this court it said, through Mr. Justice Field, that the purport of the charge was in effect "that in order to presume a lost deed the jury must be satisfied that such a deed had in fact actually existed; therein was error.

"In such cases 'presumptions,' as said by Sir William Grant, 'do not always proceed on a belief that the thing presumed has actually taken place. Grants are frequently presumed, as Lord Mansfield says, *Eldridge v. Knott*, Cwp. 215, merely for the purpose and from a principle of quieting possession. There is as much occasion for presuming conveyances of legal estates, as otherwise titles must forever remain imperfect and in many respects unavailable, when from length of time it has become impossible to discover in whom the legal estate (if outstanding) is actually vested.' *Hillary v. Waller*, 12 Ves. 239, 252."

And quoting Mr. Justice Story in *Ricard v. Williams*, 7 Wheat. 59, 119, "'a grant of land may as well be presumed as a grant of a fishery, or of common, or of a way. Presumptions of this nature are adopted from the general infirmity of human nature, the difficulty of preserving muniments of title, and the public policy of supporting long and uninterrupted possessions. They are founded upon the consideration that the facts are such as could not, according to the ordinary course of human affairs, occur, unless there was a transmutation of title to, or an admission of an existing adverse title in, the party in possession.' It is not necessary, therefore, in the cases mentioned, for the jury, in order to presume a conveyance, to believe that a conveyance was in point of fact executed. It is sufficient if the evidence leads to the conclusion that the conveyance might have been executed, and that its

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existence would be a solution of the difficulties arising from its non-execution." And, further quoting from the Supreme Court of Tennessee in *Williams v. Donell*, 2 Head, 695, 697, "it is not indispensable, in order to lay a proper foundation for the legal presumption of a grant, to establish a probability of the fact that in reality a grant was ever issued. It will afford a sufficient ground for the presumption to show that, by legal possibility, a grant might have been issued. And this appearing, it may be assumed in the absence of circumstances repelling such conclusion that all that might lawfully have been done to perfect the legal title was in fact done, and in the form prescribed by law."

These principles were affirmed as applicable to grants of the kind we are considering in *United States v. Chaves*, 159 U. S. 452. Mr. Justice Shiras, speaking for the court, said :

"Without going at length into the subject, it may be safely said that by the weight of authority, as well as the preponderance of opinion, it is the general rule of American law that a grant will be presumed upon proof of an adverse, exclusive and uninterrupted possession for twenty years, and that such rule will be applied as a *presumptio juris et de jure*, whenever by possibility a right may be acquired in any manner known to the law. 1 Greenleaf Ev. 12th ed. § 17; *Ricard v. Williams*, 7 Wheat. 59, 109; *Coolidge v. Learned*, 8 Pick. 503. Nothing, it is true, can be claimed by prescription which owes its origin to, and can only be had by, matter of record; but lapse of time, accompanied by acts done or other circumstances, may warrant the jury in presuming a grant or title by record. Thus, also, though lapse of time does not of itself furnish a conclusive bar to the title of the sovereign, agreeably to the maxim, *nullum tempus occurrit regi*; yet if the adverse claim could have had a legal commencement, juries are advised or instructed to presume such commencement, after many years of uninterrupted possession or enjoyment. Accordingly royal grants have been thus found by the jury, after an indefinitely long-continued peaceful enjoyment accompanied by the usual acts of ownership. 1 Greenleaf Ev. § 45.

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"The principle upon which this doctrine rests is one of general jurisprudence, and is recognized in the Roman law and the codes founded thereon, Best's Principles of Evidence, § 366, and was, therefore, a feature of the Mexican law at the time of the cession."

The application of these principles to the case at bar does not need many directing words.

It is contended by the Government that no juridical possession is shown under the grant to the southern portion of the tract; that there is no grant shown to Sedillo of the northern portion of the tract; that admitting both are shown there is no evidence that the title which Don Diego Borrego received in 1734 was conveyed to Clemente Gutierrez, who was shown to have had the possession claiming title in 1785. To infer all these things, it is argued, is to build presumption on presumption, and carry constructive proof too far. The argument is not formidable. The instances mentioned are of the same kind as those in the cited cases, and the principle of the cases is not limited or satisfied by the presumption of only one step in the title. It requires the presumption of all that may be necessary to the repose of the title—to the absolute assurance and quietude of the possession. Quoting the language of the Supreme Court of Tennessee, approved by this court, it assumes that all "that might lawfully have been done to perfect the legal title was in fact done and in the form prescribed by law." And, "There is hardly a species of act or document, public or private, that will not be presumed in support of possession. Even acts of Parliament may thus be presumed, as also will grants from the crown." Best on Presumptions, sec. 109.

The number of steps presumed does not make the principle different, and whether it would give more strength to rebutting testimony we might be concerned to consider if there was any such testimony.

We think there can be but one conclusion in the case. The possession of the land began in wrong or began in right. If in wrong, it must be shown. The maxims of the law declare the other way. Besides it is admitted that the Pueblo of Ise-

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leta has had open and notorious possession as far back as the memory of the oldest living inhabitant can extend, and that it was claimed under the heirs of Clemente Gutierrez, and evidenced by documents which came from the custody and control of the officers who have had them during like memory. Back to Clemente Gutierrez, therefore, a continuous possession is established by admission and by testimony not contradicted. Back beyond the period of living memory and beyond that period the title needs no inquiry for its validity and repose.

But there is some documentary evidence coming from a remoter time, and it has been discussed by counsel. We do not think it is necessary to consider it at any length. It consists of the original grant to Antonio Gutierrez, three instruments of conveyance, one reciting the grant to Sedillo, and all asserting ownership and possession of the lands, and an inventory made of the estate of Clemente Gutierrez by the governor of New Mexico, then an official of Spain. The latter was made a judicial record, and the lands mentioned in it distributed among the heirs. It is to this possession that the appellees trace, as we have seen, and the questions which can arise about it—from whom derived and the rightfulness or wrongfulness of it—depend upon principles already sufficiently discussed. It is enough to say that Clemente Gutierrez died in possession, and his possession was proof of ownership.

It is further contended by the Government that the record shows that the appellees do not hold the interests of all of the heirs of Clemente Gutierrez, and that, therefore, the Court of Private Land Claims should have confirmed the grant, “not to the claimants appearing before it, but to the ‘assigns and legal representatives of the original grantee.’” And it is urged that “to make a decree in any other form is to ‘conclude and affect the private rights of persons as between each other,’ and this the statute [of 1891] prohibits.”

We do not concur in this view of the statute. By careful distinction it precludes such view. Section 8 of the statute under which the petitions were presented provides that persons claiming lands under a Spanish or Mexican title “that

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was complete and perfect at the date when the United States acquired sovereignty therein shall have the right (but shall not be bound) to apply to said court in the manner in this act provided for in other cases for confirmation of such title;" but the confirmation of such title "shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall *have been disposed of by the United States*, and always subject to and not to affect any conflicting private interests, rights or claims held or claimed adversely to any such claim or title, or adversely to the holder of any such claim or title. And no confirmation of claims or titles in this section mentioned shall have any effect other or further than as a release of all claim of title by the United States; and no private right of any person, as between himself and other claimants or persons in respect of any such lands, shall be in any manner affected thereby."

It will be observed that the provision is that from the confirmation there shall be excepted *land that shall have been disposed of by the United States*. It is, however, made subject to "conflicting private interests, rights or claims." The distinction is obvious, and the reason for it equally so. The proceeding is not a litigation between conflicting private interests; it is one against the United States, and determinative only of the title against the United States. To avoid confusion the lands that have been disposed of by the United States are required to be excepted from confirmation. To all other interests and claims the confirmation is made subject. The forum for their determination is the ordinary courts. *Ainsa v. New Mexico & Arizona Railroad*, ante, 76; and *United States v. Conway*, ante, 60; both decided at the present term.

Decree affirmed.